

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

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5 STATE OF ARIZONA,)
Plaintiff,)
)
6 vs.) 2 CA-CR 2011-0193
) CR-20093952
)
7 JEFFREY ALLEN WOOD,)
Defendant.)
)
8 _____)

9

10 BEFORE: THE HON. JOHN LEONARDO, DIV. 10

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13 APPEARANCES:

14

MARK DIEBOLT
15 appearing for the State

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17 DONALD KLEIN
18 SANDRA BENSLEY
19 appearing for the Defendant

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JURY TRIAL - DAY ONE

5/10/11

Deirdre Muzall, RDR, #50012
Certified Court Reporter

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PROCEEDINGS

2

3 THE COURT: Good morning.

4 MR. DIEBOLT: Good morning, Judge.

5 THE COURT: We are here on State versus Wood,
6 criminal 20093952. If you would announce your presence
7 for the record, please.

8 MR. DIEBOLT: Mark Diebolt appearing for the
9 State.

10 MR. KLEIN: Good morning, Your Honor. Don Klein
11 and Sandra Bensley for Jeffrey Wood, he is present in
12 custody.

13 THE COURT: Good morning. Are there some
14 matters that we need to take up before we bring the jury
15 in?

16 MR. DIEBOLT: I think just briefly, Judge. We
17 don't need to particularly conclude them at this moment
18 but I had a, if I may approach, a couple quick things as
19 to, really I think the Court can take those under
20 advisement. I'm asking that the nature, I guess we were
21 going to stay away from the nature of the offenses, both
22 the defendant and the victim have a murder conviction.

23 THE COURT: All right.

24 MR. DIEBOLT: Obviously that they have a prior
25 would come in and that they are in DOC would come in, but

1 I don't think there's any relevance at this stage to
2 introduce that they are both in for murder. I guess there
3 is a chance that some jurors would recognize probably
4 Schwartz's name more than any other person's name but we
5 can deal with that.

6 THE COURT: Mr. Klein.

7 MR. KLEIN: Let me address both issues as to the
8 motion in limine. Number one, I don't think it is timely.
9 Number two, it doesn't conform to the requirements of the
10 rules setting forth an explanation as to why the motion
11 should be granted.

12 And beyond that, well, let's start off with the
13 nature of the felony. We had talked about that at our
14 last hearing on the motions that we had timely filed. And
15 at that time the State made no comment and the Court
16 actually questioned whether we were going to get into the
17 nature of the prior. I had said yes, the State made no
18 suggestion that they were going to ask to limit it.

19 I think in connection particularly with jury
20 selection if we don't mention the nature of Mr. Schwartz's
21 prior, we run the risk that midway through the jury
22 selection or during the trial, we're going to have a juror
23 who says, oh, I know that man, he's the guy who killed the
24 other doctor or conspired to kill the other doctor.

25 THE COURT: I just want to make sure what your

1 position actually is: is it that the nature of the
2 conviction for both the defendant and the victim be
3 mentioned?

4 MR. KLEIN: I don't anticipate that Mr. Wood is
5 going to testify. Therefore there is no reason why any
6 mention should be made of a prior conviction, so, and the
7 motion in limine doesn't address that. I think that it is
8 appropriate to have the nature of Mr. Schwartz's prior
9 conviction. And as far as --

10 THE COURT: And the reason apparently is for voir
11 dire purposes, so that the jury will know before they are
12 actually sworn in who this is, that they may have read
13 something about him and have some opinion about him that
14 they may not recognize until the end of the case?

15 MR. KLEIN: Yes. And in terms of Brad Roach's
16 testimony, we disclosed him as well previously. I
17 anticipate that he will testify concerning Mr. Schwartz's
18 reputation for honesty and his reputation for
19 aggressiveness. Both of those are legitimate
20 considerations.

21 THE COURT: Based on what, what is the foundation
22 for that kind of testimony?

23 MR. KLEIN: His conversations with other people
24 in the community about Mr. Schwartz. I believe he's met
25 Mr. Schwartz.

1 THE COURT: Okay. Just like any other witness?

2 MR. KLEIN: Yes. Not as his lawyer.

3 THE COURT: Right, okay, that's what I was
4 concerned about. Mr. Diebolt.

5 MR. DIEBOLT: Judge, I don't know how it's
6 relevant that the nature of his, I mean if we are going to
7 say they are both murderers, then say they are both
8 murderers; otherwise that information should be left out.

9 THE COURT: Well, the point of it, and I think it
10 is a legitimate one, is that that was a case of great
11 notoriety that the victim was involved in. And when we
12 ask jurors, well, one of the earlier questions we ask them
13 is do you know any of the people involved in this case?

14 And if they don't recognize that he is that
15 person, but do later in the case and if they have some
16 opinion about him, good or bad, that's something that we
17 need to get out and make sure that it is exposed before
18 they are sworn in. That's the only issue here. And if
19 you have a different suggestion as to how we can do that,
20 I am happy to do it.

21 MR. DIEBOLT: Well --

22 THE COURT: Or to consider it.

23 MR. DIEBOLT: If it comes up, let's say they
24 don't recognize the name, it comes up during the trial,
25 that's a detriment to the State's case, not the defendant,

1 potentially. Oh, this guy, I remember this guy, he killed
2 another guy.

3 And I can assure the Court I won't be asking for
4 a mistrial. So I don't know, the prejudice is really to
5 the State, not to the defense as to that aspect of it.

6 I just think we should, it makes more sense to me
7 to stay away from it. If someone thinks in their mind
8 that might know of him and they ask a question, we can
9 deal with that.

10 But I mean, are we looking for someone, I think
11 it convolutes the voir dire process, are we looking for
12 someone who has never heard of Brad Schwartz and the Brian
13 Stidham scenario that -- -

14 THE COURT: No, it is just that if we get it out
15 there, then we can inquire about whatever feelings they
16 might have. In order to present a fair trial all the way
17 around. So. I mean I don't think it's necessarily
18 imperative that we tell them that he was convicted of thus
19 and such, but that he's associated with that case,
20 although I don't know how you separate them.

21 Aside from that issue, I don't have any problem
22 when Dr. Schwartz takes the witness stand in terms of
23 impeachment, that he's just impeached with the fact that
24 he has a felony conviction without the nature of it, that
25 would be the standard way that we would deal with it. But

1 in this case because of the notoriety of that, perhaps
2 what we ought to do is just, you can ask whatever
3 questions you want around that without hitting it full on.
4 And we can bring jurors up to the bench and inquire if
5 there's any indication that somebody does know the victim.

6 Are we going to refer to him as Dr. Schwartz?

7 MR. KLEIN: I would object to it, his license to
8 practice medicine in Arizona has been revoked.

9 THE COURT: Yes, but absent that there is less
10 likely recognition of who he is, if somebody has read
11 about the case in the past. Do you still --

12 MR. KLEIN: I think the Court can say he used to
13 be a doctor.

14 MR. DIBOLT: What happens when you retire as a
15 judge, they still call you judge I have noticed. I have
16 seen some retired judges referred to as that.

17 THE COURT: I am not sure that happens if you are
18 convicted of murder, though.

19 MR. KLEIN: Technically, Judge, conspiracy to
20 commit first degree murder, not murder.

21 THE COURT: All right. The motion to preclude
22 the testimony of Brad Roach as a character witness is
23 denied.

24 The motion to preclude the nature of the victim's
25 felony is granted at this point. But I will give counsel

1 free reign to probe around that during voir dire.

2 All right. Anything else? Let me inquire again
3 about the possible length of the trial. I think we had it
4 set for four days, is that still what you expect?

5 MR. DIEBOLT: No, Judge.

6 MR. KLEIN: I think the State's only going to be
7 calling four witnesses. We intend to call four witnesses,
8 I think we should be able to get it to the jury Thursday
9 morning.

10 THE COURT: Okay.

11 MR. DIEBOLT: I think faster than that.

12 THE COURT: Okay. On the outside we will tell
13 the jury Thursday, is that good?

14 MR. KLEIN: Yes.

15 THE COURT: Anything else before we bring the
16 jury panel in?

17 MR. KLEIN: We would like to make a mini opening
18 to assist in the voir dire process.

19 THE COURT: Of how much length, Mr. Klein?

20 MR. KLEIN: Two minutes.

21 THE COURT: Mr. Diebolt, do you have any
22 objection to doing that?

23 MR. DIEBOLT: That's fine, Judge.

24 THE COURT: And would you like me to do that very
25 early, at the point where I normally would tell them what

1 the trial is about, very early in the process?

2 MR. KLEIN: Whatever the Court is comfortable
3 doing in terms of scheduling.

4 THE COURT: All right. You may bring them in
5 then.

6 MR. DIEBOLT: I had one question about getting,
7 if we are on a normal schedule and take a break and come
8 back and probably Brad Schwartz would be the first
9 witness, I don't know how to get him in here. They don't
10 want to walk him up to the stand, just to give you a
11 head's up, the officers don't want to walk him up to the
12 stand, they would rather he be sitting there, so I don't
13 know how we can work that out, but I am sure we will
14 figure it out.

15 THE COURT: Well, we will just have to take a
16 little recess then. Although it is not going to be an
17 issue that he's in custody so I don't know that it makes
18 much difference.

19 MR. DIEBOLT: I think it is a security issue.
20 Walking personnel, the nature of his conviction.

21 THE COURT: Is that right, you would rather have
22 him seated before the jury is in the courtroom?

23 SHERIFF'S DEPUTY: We will have him seated before
24 they come into the courtroom.

25 THE COURT: That's better for you security wise?

1 SHERIFF'S DEPUTY: Yes, sir.

2 THE COURT: Very well. You may bring them in.

3 THE BAILIFF: The jury is entering.

4 THE COURT: Please be seated. Good morning,

5 Ladies and Gentlemen. This is the time set for criminal
6 trial in the matter of State of Arizona versus Jeffrey
7 Wood, it is criminal 20093952.

8 Is the State ready to proceed?

9 MR. DI EBOLT: Yes, Your Honor.

10 THE WITNESS: Is the defense ready to proceed?

13 THE COURT: Ladies and Gentlemen, at this point
14 if you would please all stand and face the courtroom clerk
15 and raise your right hand to be sworn as jurors.

16

17 ((Whereupon the prospective jury panel is
18 sworn.))

19

20 THE COURT: Please be seated. Ladies and
21 Gentlemen, I first want to thank you for your patience. I
22 know you have been in the courthouse for a long period of
23 time already this morning and sometimes in circumstances
24 that were not extremely comfortable, so we very much
25 appreciate your being here and your patience with our

1 process.

2 We are going to begin the jury selection process
3 in this case at this point. And this means that I will be
4 asking a number of questions of you, and these questions
5 are not designed to pry unnecessarily into your personal
6 lives and we hope that they don't do that. But it's
7 necessary that we ask these questions to find out if you
8 have any knowledge about this particular case or about any
9 of the people involved in it; to find out if you have any
10 preconceived opinions about the case that you might find
11 difficult to lay aside; and to find out if you have had
12 any personal or family experiences that might cause you to
13 identify yourselves with one side or the other.

14 In other words, we need to ask these questions to
15 do all that we can to insure that whoever is selected to
16 sit as a juror in this case can do so fairly and
17 impartially.

18 Please do not withhold information in order to be
19 seated on the jury and do not be concerned with whether
20 your answers are right or wrong. This isn't any kind of
21 test; there are no right or wrong answers. We ask simply
22 that you be honest and candid in your responses and that
23 you not be concerned with what you think I or the lawyers
24 want to hear from you.

25 If your answer to a question that I ask of the

1 whole panel is no, then you need do nothing. If your
2 answer is yes, please raise your hand and when I call on
3 you, please state your name first so that the court
4 reporter can take down not only what is said but who it is
5 that is speaking.

6 If at any time a question is asked for which you
7 do have a yes answer but for whatever reason you prefer
8 not to answer the question in open court, let me know that
9 and I will give you the opportunity of coming down in
10 front of the bench and responding in just the presence of
11 the attorneys and myself.

12 Those who have not been asked to sit in a
13 particular seat should not respond to these questions as
14 we ask them. But you should pay close attention to the
15 questions as we go through them because invariably some of
16 those who are answering the questions will be excused for
17 one reason or another during the selection process, and
18 when that happens one of you will be called forward to sit
19 in the empty seat. And the first thing that I will say to
20 you when you come forward is, have you heard all the
21 questions that we have asked so far?

22 And secondly, would you have had any yes answers
23 to any of those questions?

24 So it's important that you remember the questions
25 that are asked and especially those that you would have

1 had yes answers to.

2 Before we go any further I want to introduce to
3 you the courtroom staff and those who will participate in
4 the trial. Seated in front of me is De Muzall who is the
5 court reporter. It is her responsibility to take down
6 verbatim everything that is said in open court. The
7 Superior Court is referred to as a court of record and the
8 transcripts that are possible as a result of her notes are
9 part of the Court's official record.

10 And to my left is Henry Rivera who is the
11 courtroom clerk. His responsibility is to swear in
12 jurors, swear in witnesses that appear during the trial,
13 keep track of exhibits admitted into evidence, and at the
14 end of every court session he produces a short summary of
15 what happened in Court referred to as a minute entry. And
16 that is also part of the Court's official record.

17 And the young man who helped you find your way
18 from the jury assembly room up to the courtroom today is
19 John Wilford, he is the Court bailiff, it is his
20 responsibility to make sure the jury gets to where they
21 need to go and have what they need to have throughout the
22 course of the trial.

23 And if the prosecution would please introduce
24 himself.

25 MR. DIEBOLT: Yes, thank you, Judge. My name is

1 Mark Diebolt, I'm a prosecutor with the Pima County
2 Attorney's Office.

3 THE COURT: Thank you. And if defense counsel
4 would introduce themselves and those at his table.

5 MR. KLEIN: Yes. Good morning, Ladies and
6 Gentlemen. My name is Don Klein, I am a lawyer at the
7 Pima County Public Defender's Office. Assisting me is
8 Sandra Bensley, she's also a lawyer at the Public
9 Defender's Office. Between us is a young gentleman by the
10 name of Jeffrey Wood. And behind us is our legal
11 assistant, Nelva Harper.

12 THE COURT: Do any of you know or think you know
13 any of the people that have been introduced to you so far?

14 Okay. The defendant in this case is charged with
15 one count of aggravated assault, temporary but substantial
16 disfigurement. And in order to give you a better idea of
17 what the charges concern, I am going to let the attorneys
18 explain it a little bit further to you.

19 And Mr. Diebolt, you may proceed.

20 MR. DIEBOLT: Thank you, Judge. This is just a
21 chance for us to tell you in about two minutes what the
22 case is about. And at a different point in time I will
23 give a little bit longer opening statement. But it is a
24 fairly short, simple, direct case. And that is there are
25 two inmates at the Department of Corrections, the

1 defendant and the victim. The defendant attacked the
2 victim outside a creative writing class. Beat him
3 severely enough that he suffered substantial injuries to
4 his face, nose, cuts, and bleeding.

5 So because they are Department of Corrections
6 inmates, they are still charged under the state statute
7 which is aggravated assault, causing temporary but
8 substantial injury.

9 And that's why we are here today. Thank you.

10 MR. DIEBOLT: Mr. Klein.

11 MR. KLEIN: Thank you, Your Honor. Ladies and
12 Gentlemen, this case actually goes back to September of
13 2008. Like Mr. Diebolt said, Mr. Schwartz was in prison
14 at the Tucson prison way out on Wilmot south of I-10.
15 Mr. Wood was also in prison. They were both attending the
16 creative writing class that was held at the Department of
17 Corrections.

18 At some point on September 27th, 2008, right
19 before the class was about to end, Brad Schwartz got
20 punched in the face several times. The man who did that I
21 think the evidence is going to show is Jeff Wood. The
22 reason that he did that I think the evidence is going to
23 show is basically part of a plan by Brad Schwartz to make
24 the State of Arizona pay for his conviction. He believes
25 he was wrongfully convicted, wrongfully put in prison and he's

1 angry about that.

2 And so he engages in conduct so that Jeff Wood
3 basically punches him, punches him several times, then
4 walks calmly back into the creative writing class.

5 You will find out that within roughly a year
6 after this happened, Brad Schwartz filed a civil lawsuit
7 against the Department of Corrections claiming that they
8 failed to protect him from his being assaulted. In that
9 lawsuit he alleges that even before this happened he had
10 been assaulted at least three times. The first time
11 happened in roughly July of 2008 and then there were two
12 other ones between the end of July of 2008 and September
13 of 2008.

14 You are also going to hear that the Department of
15 Corrections personnel offered to put Mr. Schwartz in what
16 is called protective custody so that he won't have to deal
17 when many of the people who are in what's called general
18 population. Mr. Schwartz refused to be in protective
19 custody. He's willing to risk being in general
20 population, again as part of his scheme to support his
21 lawsuit against the State of Arizona and the Department of
22 Corrections.

23 Basically it comes down to Mr. Schwartz inciting,
24 doing acts that provoked Jeff Wood into punching him
25 several times. Once that confrontation was done, no

1 further attacks on Mr. Schwartz. Jeff Wood went into the
2 classroom, was detained eventually by corrections officers
3 at the Department of Corrections, admitted that he had
4 punched Mr. Schwartz and actually later on when he was
5 talked to by an investigator, Ian Friedlander, he said --

6 MR. DIEBOLT: I am going to object to self
7 serving at this point.

8 THE COURT: This is getting to be beyond the
9 scope of a mini opening.

10 MR. KLEIN: Okay. Mr. Schwartz was punched, he
11 is punched because he provoked in order to fulfill his
12 goal of filing a lawsuit against the State of Arizona.

13 THE COURT: Ladies and Gentlemen, having been
14 given that brief outline of what the case concerns, do any
15 of you think you have seen, heard or read anything about
16 this case or have you heard anyone express an opinion
17 about it?

18 Have you or any members of your family or close
19 friends ever been involved in any way in a case like this
20 one? All right. We will start with Mr. Marum, is it?
21 What is the situation?

22 JUROR MARUM: I got stabbed in 1997. I don't
23 think I can do it.

24 THE COURT: All right. Was it while you were --
25 JUROR MARUM: I was assaulted.

1 THE COURT: Away from work, not a work situation?

2 JUROR MARUM: It was right here at the Tucson
3 public library.

4 THE COURT: All right. And you think that the
5 effect of that is going to make it difficult?

6 JUROR MARUM: Yes, sir, I know it will.

7 THE COURT: Thank you, Mr. Marum, we will excuse
8 you from service on this jury and ask you to report back
9 to the jury commissioner's office on the 1st floor. Thank
10 you for being here.

11 And Ms. Patricio.

12 JUROR PATRICIO: I had a similar situation with my
13 sister and it was dealt with in tribal court.

14 THE COURT: How long ago was that?

15 JUROR PATRICIO: About a year and a half, two
16 years ago.

17 THE COURT: Some kind of an assault?

18 JUROR PATRICIO: Yes.

19 THE COURT: Did it involve any weapon?

20 JUROR PATRICIO: No

21 THE COURT: Do you think that will have any
22 effect on your ability to be fair and impartial as a
23 juror?

24 JUROR PATRICIO: Yes.

25 THE COURT: Then Ms. Patricio, we will excuse you

1 and ask you to report back to the jury commissioner's
2 office on the first floor for assignment to a case of a
3 different nature. Thanks for being here.

4 Anyone else who had their hand up?

5 All right. We will fill number 11.

6 THE CLERK: Bernard Dougherty.

7 THE COURT: And fill number 14.

8 THE CLERK: Pamela Dugdale.

9 THE COURT: Good morning, Mr. Dougherty. Have
10 you heard the questions we have asked so far?

11 JUROR DOUGHERTY: Yes, I have.

12 THE COURT: Would you have had yes answers to
13 anything at this point?

14 JUROR DOUGHERTY: No.

15 THE COURT: Ms. Dugdale, good morning. Have you
16 heard the questions we have asked so far?

17 JUROR DUGDALE: I have but I have a question. I
18 think I may know Mr. Schwartz, was he an eye doctor?

19 THE COURT: He was.

20 JUROR DUGDALE: Then I was a patient.

21 THE COURT: Do you think that is going to have
22 any effect on your ability to be fair and impartial?

23 JUROR DUGDALE: No, I don't think so.

24 THE COURT: Is there anything about the nature of
25 this case that would make it difficult for any of you to

1 sit as a fair and impartial juror?

2 JUROR HANSEN: May I approach?

3 THE COURT: Please come up. If counsel would
4 approach as well.

5

6 ((Whereupon there is an on-the-record bench
7 conference.))

8

9 JUROR HANSEN: My heart is not in it, I lost my
10 daughter in the last year and the name Schwartz jumped out
11 at me. I read the paper, I don't know but I don't feel
12 that my heart is in the right place yet. I'm getting
13 there, if you can respect that.

14 THE COURT: I think, is it emotional?

15 JUROR HANSEN: Yes.

16 THE COURT: Where you are, it's kind of difficult
17 for you?

18 JUROR HANSEN: Yes, it is starting to get
19 stronger but when you are the rock for your wife and son
20 and everybody else too, so, yes, I don't know when it is
21 going to jump up and bite me.

22 THE COURT: When it does, it is very distracting?

23 JUROR HANSEN: Yes, it is.

24 THE COURT: Go ahead and have a seat then, sir.

25

1 ((Whereupon the juror leaves the bench
2 conference.))

3

4 THE COURT: Counsel have any objection to
5 striking him?

6 MR. DIEBOLT: No.

7 MR. KLEIN: No.

8

9 ((End of bench conference.))

10

11 THE COURT: And Ms. Jaenick.

12 JUROR JAENICK: Yes, I have two comments. One
13 of them is I don't like violence, I'm a school teacher and
14 I have experienced it in my home, not in my personal home
15 but in my sister's. And a girl that ended up in her later
16 years, nice family, got involved with drugs and became
17 violent and at this point she's in Patent State Hospital.
18 So her children got taken away. I don't like violence or
19 anything like that and I really believe that I wouldn't be
20 objective. I don't know.

21 THE COURT: You think that would affect your
22 ability to be fair and impartial in deciding the case?

23 JUROR JAENICK: I would probably be emotional.
24 I don't like violence. Not even a trickle of blood or any
25 punch, my stomach just turns upside down.

1 THE COURT: Thank you, ma'am. And Mr. Schrage?

2 JUROR SCHRAGE: I am an officer with the
3 Department of Corrections and I deal with this stuff on a
4 weekly basis. I'm not going to be too impartial on this
5 one.

6 THE COURT: Okay. Got you. And Mr. McClellan.

7 JUROR MCCLELLAN: May I approach?

8 THE COURT: Yes, come on up.

9

10 ((Whereupon there is an on-the-record bench
11 conference.))

12

13 JUROR MCCLELLAN: I don't know if I could be
14 impartial because the defendant's attorney already
15 basically hung him out to dry. Basically admitting that
16 he did it so I don't know if I can remain impartial on it.

17 THE COURT: Well, what would be asked of you if
18 you are selected to sit as a juror is to listen to the
19 evidence and decide whether the State's met its burden of
20 proving the defendant guilty beyond a reasonable doubt
21 based on the evidence. Not based on anything else. Not
22 based on any pre-conceived opinions or thoughts you have
23 about the matter. And that's what we need to know,
24 whether you can do that or not.

25 JUROR MCCLELLAN: Okay, I should be fine with

1 that.

2 THE COURT: All right. Thank you.

3

4 ((End of bench conference.))

5

6 THE COURT: And Mr. Goldman is it?

7 JUROR GOLDMAN: May I approach?

8 THE COURT: Please come on up.

9

10 ((Whereupon there is an on-the-record bench
11 conference.))

12

13 JUROR GOLDMAN: Two things. First of all I think
14 I have already made up my mind about whether this
15 gentleman is guilty or not. And also I work as a
16 physician at UPH and I see inmates all the time and I know
17 all the guards there and they told me about Dr. Schwartz
18 and his situation, so I think I am definitely not
19 impartial at this point.

20 THE COURT: Okay. And which way does your
21 impartiality go?

22 JUROR GOLDMAN: Well, I think this guy is guilty.

23 THE COURT: All right. You understand that if
24 you are selected to sit as a juror you would have to take
25 an oath that you wouldn't decide the case until you heard

1 the evidence and you would base it only on the evidence.

2 Do you think that would be impossible for you?

3 JUROR GOLDMAN: Yes, I think my mind is made up.

4 THE COURT: All right. Thank you. You are

5 excused.

6

7 ((Whereupon the juror leaves the bench

8 conference.))

9

10 THE COURT: Any problem getting rid of him?

11 MR. KLEIN: No.

12 MR. DIEBOLT: Or any of the others so far.

13 THE COURT: I intend to strike everybody who has
14 responded to that question except of course Mr. McClellan
15 because he's okay. All right?

16 MR. KLEIN: That's fine.

17 MR. DIEBOLT: Yes.

18

19 ((End of bench conference.))

20

21 THE COURT: Anyone else have a hand up?

22 JUROR SHANK MIGLIAZZO: Yes, I just know I would
23 not be very good at this trial. Do you want me to
24 approach the bench?

25 THE COURT: Yes, please.

1

2 ((Whereupon there is an on-the-record bench
3 conference.))

4

5 JUROR SHANK MIGLIAZZO: There's just a friend of
6 mine who was assaulted, attacked and hospitalized and I
7 abhor violence and I just know it would affect the way I
8 look at this.

9 THE COURT: How long ago was that?

10 JUROR SHANK MIGLIAZZO: Three years ago.

11 THE COURT: A close friend did you say?

12 JUROR SHANK MIGLIAZZO: Yes.

13 THE COURT: Attacked in what kind of a situation?

14 JUROR SHANK MIGLIAZZO: She was in a shopping
15 mall and they stole her purse and beat her. It was later
16 in the evening. It wasn't when the mall first opened.
17 But it was not pretty.

18 THE COURT: Okay. Thank you. You may take your
19 seat.

20

21 ((Whereupon the juror leaves the bench
22 conference.))

23

24 THE COURT: Any objection?

25 MR. KLEIN: No.

1 MR. DI EBOLT: No.

2 THE COURT: Okay.

3

4 ((End of bench conference.))

5

6 THE COURT: And Ms. Johnson.

7 JUROR JOHNSON: Shall I tell you from here or
8 should I come up?

9 THE COURT: What is the nature of it?

10 JUROR JOHNSON: I will just come up.

11 THE COURT: All right. Come on up.

12

13 ((Whereupon there is an on-the-record bench
14 conference.))

15

16 JUROR JOHNSON: I read something about
17 Mr. Schwartz and personally I think he's a real douche bag
18 and they should have let that guy finish him off.

19 THE COURT: Okay. So you think that might have
20 an effect on your ability to be fair?

21 JUROR JOHNSON: Probably.

22 THE COURT: Okay. Thank you.

23

24 ((End of bench conference.))

25

1 THE COURT: Anybody else? The Court will excuse
2 the following jurors and ask all of you to report back to
3 the jury commissioner's office on the first floor so that
4 they can assign you to some other case of a different
5 nature. That would be Ms. Jaenicke, Mr. Schrage, Mr.
6 Glenn Hansen, Ms. Shank Migliazzo and Ms. Johnson as well.

7 And we will fill number eight.

8 THE CLERK: Michael Bouley.

9 THE COURT: Fill number ten.

10 THE CLERK: Anissa Brumfield.

11 THE COURT: Fill number 18.

12 THE CLERK: Anthony De Leon.

13 THE COURT: Fill number 20.

14 THE CLERK: Karen Trujillo.

15 THE COURT: And number 21.

16 THE CLERK: William Roe.

17 MR. KLEIN: Your Honor, can we approach?

18 THE COURT: Yes.

19

20 ((Whereupon there is an on-the-record bench
21 conference.))

22

23 MR. KLEIN: I believe Dr. Goldman stressed that
24 he could not be fair.

25 THE COURT: You are right, I did miss him, I am

1 sorry, I will take care of it.

2 ((End of bench conference.))

3

4 THE COURT: And Mr. Goldman, you are also
5 excused, I'm sorry I missed you through the first round.
6 Please report back to the jury commissioner's office on
7 the first floor.

8 And we will fill number six.

9 THE CLERK: Linda Caputo.

10 THE COURT: Good morning, Ms. Caputo, have you
11 heard the questions we have asked so far?

12 JUROR CAPUTO: Yes.

13 THE COURT: Would you have yes answers to
14 anything?

15 JUROR CAPUTO: No.

16 THE COURT: And Mr. Bouley, have you heard the
17 questions we have asked so far?

18 JUROR BOULEY: Yes.

19 THE COURT: Would you have had any yes answers?

20 JUROR BOULEY: No.

21 THE COURT: Ms. Brumfield, good morning, have you
22 heard the questions we have asked?

23 JUROR BRUMFIELD: Yes.

24 THE COURT: Would you have yes answers to
25 anything?

1 JUROR BRUMFIELD: Yeah. Can I approach?

2 THE COURT: Please come on up.

3

4 ((Whereupon there is an on-the-record bench
5 conference.))

6

7 JUROR BRUMFIELD: I knew the doctor that was
8 murdered so I would not really be fair as far as him being
9 punched or a fair juror.

10 THE COURT: Were you a patient?

11 JUROR BRUMFIELD: No, I babysat for him.

12 THE COURT: All right. Thank you.

13

14 ((End of bench conference.))

15

16 THE COURT: And Ms. Brumfield, we will excuse you
17 and ask you to report back to the jury commissioner's
18 office on the first floor, thank you for being here,
19 ma'am, they will assign you to some other case.

20 Fill number ten.

21 THE CLERK: Karen Lennex.

22 THE COURT: Good morning, Ms. Lennex, have you
23 heard the questions we have asked so far?

24 JUROR LENNEX: Yes.

25 THE COURT: Would you have had yes answers to

1 anything?

2 JUROR LENNEX: No.

3 THE COURT: Thank you. And Mr. De Leon.

4 JUROR DE LEON: Good morning.

5 THE COURT: Have you heard the questions we have
6 asked so far?

7 JUROR DE LEON: Yes.

8 THE COURT: Would you have had any yes answers to
9 anything?

10 JUROR DE LEON: No.

11 THE COURT: Ms. Trujillo, have you heard the
12 questions we have asked?

13 JUROR TRUJILLO: Yes.

14 THE COURT: Would you have had any yes answers to
15 anything?

16 JUROR TRUJILLO: Can I ask to approach?

17 THE COURT: Yes, if counsel would approach,
18 please.

19

20 ((Whereupon there is an on-the-record bench
21 conference.))

22

23 JUROR TRUJILLO: Just by what I have heard I
24 already have ideas of how I would, what I would say, so
25 does that have an effect, I mean?

1 THE COURT: Well, here's the thing. If you are
2 selected to sit as a juror, you take an oath to decide the
3 case based on the evidence. And you are not supposed to
4 make a decision as to guilt or innocence until you have
5 heard all the evidence and the arguments of the attorneys,
6 then you base your decision on the evidence you heard and
7 based only on that.

8 JUROR TRUJILLO: I mean right now I already have
9 without hearing more than what I just heard, so I was just
10 wondering if that could happen.

11 THE COURT: What is your opinion now?

12 JUROR TRUJILLO: I feel like it was an excuse and
13 he probably, I would probably vote against.

14 THE COURT: His conviction?

15 JUROR TRUJILLO: Not conviction, for him to be
16 convicted.

17 THE COURT: I assume you would vote guilty?

18 JUROR TRUJILLO: Yes.

19 THE COURT: Would you be able to set that aside
20 and listen to the evidence?

21 JUROR TRUJILLO: I could do that. That was my
22 question. I just had that opinion. But despite what I
23 have heard I could do that. That was my question.

24 THE COURT: It might come into your mind or you
25 might feel like that just a little bit, you might feel one

1 way or the other but the important thing is whether you
2 can set that aside and have an open mind and not decide
3 the case until you hear the evidence; do you think you can
4 do that?

5 JUROR TRUJILLO: Yes, I can.

6 THE COURT: All right.

7

8 ((Whereupon the juror leaves the bench
9 conference.))

10

11 MR. DIEBOLT: Wouldn't it be prudent to perhaps
12 tell them that what Mr. Klein says, what they heard, what
13 we said, it is not evidence, nothing presented to them so
14 far is evidence, that they are to keep an open mind. I
15 think you probably covered that but I don't know, we seem
16 to be getting some people who are perhaps prejudging and
17 basing their opinion on what he said. Because he was
18 giving argument right there.

19 THE COURT: Well, we are not very far into the
20 questioning, I think it might be pre-mature, we have not
21 gotten into the presumption of innocence yet. But if it
22 appears to either of you that we need to say something
23 along those lines during the process, I can.

24

25 ((End of bench conference.))

1

2 THE COURT: Mr. Roe, good morning to you, sir.

3 JUROR ROE: Good morning.

4 THE COURT: Have you heard the questions we have
5 asked so far?

6 JUROR ROE: Yes.

7 THE COURT: Would you have had any yes answers to
8 anything?

9 JUROR ROE: No.

10 THE COURT: Ladies and Gentlemen, I am going to
11 read to you a list of potential witnesses that may appear
12 in the case and I read this list so that you can let us
13 know if you know or you think you know any of these
14 people.

15 Bradley Schwartz, the named victim in the case.

16 Detective Ian Friedlander.

17 Sergeant Samuel Arredondo.

18 Corrections Officer Julie Fairchild.

19 Corrections Officer Angelo Chiavallio.

20 Lynn Quattlebaum.

21 Corrections Officer Sian Rayot.

22 Brad Roach.

23 I am seeing no hands to any of those.

24 JUROR DUGDALE: I know Dr. Bradley Schwartz.

25 THE COURT: In what way?

1 JUROR DUGDALE: I was a patient of Dr. Schwartz.

2 THE COURT: You mentioned that before.

3 JUROR DUGDALE: Yes.

4 THE COURT: Since you mentioned it before, have
5 you thought any more about it and do you think it is going
6 to have any effect on your ability to be fair and
7 impartial as a juror?

8 JUROR DUGDALE: No.

9 THE COURT: How long were you a patient?

10 JUROR DUGDALE: Just one time about around 2000,
11 2001, something like that.

12 THE COURT: Thank you, ma'am.

13 Ladies and Gentlemen, we know that jury service
14 is an inconvenience to all of you to one extent or another
15 and we also know that you appreciate how important it is
16 that people such as yourselves be willing to sit as jurors
17 in cases like this one. It is one of the most important
18 civic duties that you can be called upon to perform and we
19 know that you don't take this duty lightly.

20 Let me explain a little bit about the schedule
21 that we anticipate for this trial. We will probably have
22 a jury selected by 1:30, we will probably start the case
23 at 1:30 and go until approximately 5:00 o'clock today. We
24 will have a recess in the middle of the afternoon of 15 or
25 20 minutes and we try not to be in session more than hour

1 and a half at a time without some kind of a break.

2 We will also ask the jury to return tomorrow
3 morning at 10:30. We will go from 10:30 to noon. We will
4 take a recess from noon to 1:30, come back at 1:30 and go
5 again until approximately 5:00 o'clock with a short recess
6 in the middle of the afternoon. That's the normal
7 schedule that we keep during trials.

8 The attorneys tell me that they expect this case
9 at the latest to conclude probably Thursday morning. So
10 it's not a particularly long case. It should get to the
11 jury, this is all a little bit of guess work because you
12 never know exactly how things are going to go, but the
13 attorneys are usually fairly accurate in that regard.

14 So is there anything about the length of the
15 trial, the schedule that I just outlined that creates a
16 problem for you that is serious enough, whether it be
17 personal, business or health, that is significant enough
18 that any of you feel the need to actually be excused from
19 service on this jury and report back to the jury
20 commissioner for assignment to some other case?

21 All right. I am seeing some hands and I will
22 call on you individually to get your situations. But
23 first I will explain to you that the law provides that a
24 juror may be excused only if his or her absence from work
25 would materially and adversely affect the public health,

1 safety or welfare, or if service as a juror would impose
2 an undue hardship on that juror.

3 So having explained that, let me see your hands
4 one more time all right. Mr. Dingel�ine?

5 JUROR DINGELDINE: I may have a funeral to go to.
6 A motorcycle accident.

7 THE COURT: It hasn't been set yet?

8 JUROR DINGELDINE: It hasn't been set yet.

9 THE COURT: So you are just waiting?

10 JUROR DINGELDINE: I don't know if it is Friday
11 or Saturday or Thursday.

12 THE COURT: And I guess you don't know anything
13 else, even if you knew the day you wouldn't know the time?

14 JUROR DINGELDINE: Right. Yes.

15 THE COURT: All right. Thank you. And Ms.
16 Lennex.

17 JUROR LENNEX: I teach first grade, we're doing
18 state testing this week and if I am not there the other
19 teachers have upwards of 40 kids in their class because we
20 don't have subs.

21 THE COURT: And how is that being handled today?

22 JUROR LENNEX: Today we had one sub that we were
23 able to get but our librarian passed away on Monday so she
24 has to take over for her the rest of the week.

25 THE COURT: So there isn't a sub to take your

1 class?

2 JUROR LENNEX: There isn't one, no.

3 THE COURT: Ms. Medina.

4 JUROR MEDINA: I just got off of maternity leave
5 so I really need to get to work because we are behind on
6 bills and I am the main provider for our household.

7 THE COURT: Do you get paid when you are on jury
8 service?

9 JUROR MEDINA: I don't believe so.

10 THE COURT: Who is your employer?

11 JUROR MEDINA: It is Dr. Brian Goldsmith, he's a
12 dentist.

13 THE COURT: All right. Anyone else? Counsel
14 wish to approach, please.

15

16 ((Whereupon there is an on-the-record bench
17 conference.))

18

19 THE COURT: We don't have many left. I'm not
20 feeling generous. So are there any feelings you have
21 about any of those three people?

22 MR. KLEIN: I think Ms. Medina and Ms. Lennex
23 have legitimate excuses. I think Dingelidine's,
24 realistically they're not going to, I have a hunch we may
25 lose Dingelidine as well because I assume he's related to

1 David Dingelidine and probably will know people in the
2 County Attorney's and such.

3 THE COURT: Okay.

4 MR. DIEBOLT: I guess you could check, she could
5 maybe call her employer and see if they are paid for jury
6 service, I don't know how you want to do that. Sometimes
7 they do. I forgot the other one.

8 THE COURT: Maybe I could ask her about her
9 family a little bit. She said she's the sole provider.
10 And she just had maternity leave.

11 MR. DIEBOLT: Yes.

12 THE COURT: So it is a confluence of a lot of
13 things. All right. Thanks.

14

15 ((End of bench conference.))

16

17 THE COURT: Ms. Medina, what does your family
18 consist of?

19 JUROR MEDINA: I have a newborn, a two and a half
20 month old and a four year old and my husband. We're
21 behind on bills so we are trying to do the catch-up game
22 right now.

23 THE COURT: Is your husband employed as well?

24 JUROR MEDINA: Yes.

25 THE COURT: All right. The Court will excuse Ms.

1 Lennex and that's all at this point. And Ms. Lennex,
2 please report back to the jury commissioner's office on
3 the first floor.

4 JUROR LENNEX: Do I give them this paperwork?

5 THE COURT: Yes. And we will fill number ten.

6 THE CLERK: Kenneth Ryan.

7 THE COURT: Have you heard the questions we have
8 asked so far?

9 JUROR RYAN: Yes.

10 THE COURT: Would you have had any yes answers to
11 anything?

12 JUROR RYAN: Yes, I think I better approach.

13 THE COURT: Please do come up. If counsel would
14 approach as well.

15

16 ((Whereupon there is an on-the-record bench
17 conference.))

18

19 JUROR LENNEX: Is Bradley Schwartz an
20 ophthalmologist?

21 THE COURT: Yes.

22 JUROR RYAN: I'm a physician. I served as dean
23 of the College of Medicine for a number of years. I have
24 heard things about him outside of what was in the press.
25 I never met him so I only know what was in the papers but

1 I have had people in my professional capacity relay things
2 about him that lead me to have a lower opinion of him than
3 I had from the press.

4 THE COURT: Okay. Having said that, we
5 understand what you are saying, if you are selected to sit
6 as a juror, that wouldn't necessarily exclude you as long
7 as you would be able to set that aside, those feelings
8 aside because your only function here is that you listen
9 to the evidence and decide whether or not this defendant
10 is guilty of what he is charged with.

11 So if you could do that, we're okay. If you
12 can't, then if you think that's going to interfere with
13 your ability to be objective and open minded and listen to
14 the evidence.

15 JUROR RYAN: As a dean I had to listen many times
16 to both sides, that's part of my job, I'm just declaring
17 what is so.

18 THE COURT: We appreciate that.

19 JUROR RYAN: It is one anecdote I was told, he
20 had stolen equipment out of our operating room.

21 THE COURT: Okay. As I said you should be
22 telling us. We are glad you are. Because we will take it
23 into consideration. But in terms of your own ability to
24 sit as a fair and impartial juror, that's only up to you;
25 do you think you could?

1 JUROR RYAN: I think I probably could.

2 THE COURT: You understand you are just deciding
3 what the facts are in this case?

4 JUROR RYAN: Yes.

5 THE COURT: This is not a referendum on Dr.
6 Schwartz.

7 JUROR RYAN: No, I know. No, I think I could.

8 THE COURT: All right. Thank you.

9

10 ((End of bench conference.))

11

12 THE COURT: Have any of you ever served as a
13 member of a Grand Jury before? That is not this kind of a
14 jury but one that usually meets several times a month to
15 decide whether charges ought to be brought.

16 Have any of you ever been called as a witness in
17 a criminal case for any reason ever in the past?

18 Have you or any members of your family or close
19 friends ever served as law enforcement officers? Mr.
20 Small, who and what kind of position?

21 JUROR SMALL: My uncle, sheriff's department.

22 THE COURT: Still is?

23 JUROR SMALL: Retired.

24 THE COURT: Was it in Pima County?

25 JUROR SMALL: Yes.

1 THE COURT: While he was with the sheriff's
2 department did he specialize in any particular area?

3 JUROR SMALL: Not that I believe.

4 THE COURT: Anyone else? Ms. Warren.

5 JUROR WARREN: My nephew is a police officer in
6 California.

7 About how long has he been a police officer?

8 JUROR WARREN: Probably about nine years.

9 THE COURT: Do you talk to him much about his
10 work?

11 JUROR WARREN: When we get together during family
12 events.

13 THE COURT: Is that yearly or less than that?

14 JUROR WARREN: Probably about three times a year.

15 THE COURT: Mr. Benjamin, did you have your hand
16 up?

17 JUROR BENJAMIN: Yes, my brother-in-law is a
18 retired officer in Massachusetts.

19 THE COURT: Okay. Anyone else in that top row?

20 JUROR CAPUTO: My son-in-law is Border Patrol.

21 THE COURT: In the Tucson sector?

22 JUROR CAPUTO: Yes.

23 THE COURT: How long has he been with them?

24 JUROR CAPUTO: Fifteen plus years.

25 THE COURT: Okay. Ms. Foley, did you have your

1 hand up?

2 JUROR FOLEY: My father was a police officer out
3 of state but he has been retired for 15 years. For 10
4 years.

5 JUROR BOULEY: Brother-in-Law used to be a cop at
6 the University of Arizona. My cousin is a cop in
7 Providence, Rhode Island.

8 THE COURT: The second row here, anybody? First
9 row? All right, Ms. O'Brien.

10 JUROR O'BRIEN: My brother is an ICE agent.

11 THE COURT: How long has he been with them?

12 JUROR O'BRIEN: About 10 years.

13 THE COURT: Any other law enforcement before that
14 for him?

15 JUROR O'BRIEN: No.

16 THE COURT: Is he in Arizona?

17 JUROR O'BRIEN: Chicago.

18 THE COURT: Anybody else? All right. Anybody
19 that responded to that question, is there anything about
20 your relationship to someone who is in law enforcement
21 that you think would have an effect on your ability to be
22 fair and impartial as a juror if you are selected to sit
23 as a juror in this case? Seeing no hands.

24 Have you or any members of your immediate family
25 ever studied or practiced law? Ms. Foley?

1 JUROR FOLEY: My husband is an attorney.

2 THE COURT: Has he ever practiced criminal law?

3 JUROR FOLEY: Well, I don't know, he was in the
4 military.

5 THE COURT: Perhaps in the military?

6 JUROR FOLEY: Yes.

7 THE COURT: How long ago would that have been?

8 JUROR FOLEY: Five years. Six years.

9 JUROR DINGELDINE: Dave Dingelidine, County
10 Attorney's Office, retired judge.

11 THE COURT: What relationship?

12 JUROR DINGELDINE: Father.

13 THE COURT: Do you think there is anything about
14 that relationship and his close association with the
15 County Attorney's Office for that period of time is going
16 to have any effect on your ability to be fair and
17 impartial?

18 JUROR DINGELDINE: No.

19 THE COURT: All right, thanks.

20 JUROR DOUGHERTY: I'm a lawyer.

21 THE COURT: Have you ever practiced criminal law?

22 JUROR DOUGHERTY: In the military but 40 years
23 ago.

24 JUROR MCCLELLAN: I studied international law and
25 international war crimes.

1 THE COURT: As a --

2 JUROR MCCLELLAN: Undergraduate.

3 THE COURT: Anyone else? Yes, Ms. Demers.

4 JUROR DEMERS: My father is a corporate attorney
5 who practices in Pennsylvania and my sister just finished
6 law school here at the University of Arizona.

7 THE COURT: You mean this month?

8 JUROR DEMERS: Yes, this weekend.

9 THE COURT: So she hasn't practiced anything yet?

10 JUROR DEMERS: No.

11 THE COURT: Anyone else? Mr. Roe?

12 JUROR ROE: I was a judge advocate four years ago
13 and practiced law in New York, but no criminal.

14 JUROR O'BRIEN: I don't practice law but I am a
15 legal assistant.

16 THE COURT: You work with an attorney or a group
17 of attorneys?

18 JUROR O'BRIEN: Joseph Watson.

19 THE COURT: Does that attorney practice criminal
20 law at all?

21 JUROR O'BRIEN: No, not really, just cases here
22 and there but not for the most part.

23 THE COURT: Anyone else? In deciding the facts
24 of this case the jury will have to evaluate the testimony
25 of witnesses. Is there anyone who would be unable to

1 evaluate the testimony by the same standard for each
2 witness?

3 In other words, anybody who comes into the
4 courtroom and takes the witness stand is entitled to have
5 the jury evaluate what they say for truthfulness and
6 accuracy based on the way that you usually would evaluate
7 what people tell you. And that is by their demeanor; by
8 whether they are contradicted by other evidence; by
9 whether or not they have a vested interest in the outcome
10 of the trial; those kinds of things.

11 But it should not be based on their status in
12 society. The standard is the same whether the person is
13 educated or uneducated or whether they are wealthy or poor
14 or whatever, and this is particularly true when it comes
15 to law enforcement officers. A law enforcement officer's
16 testimony is to be treated like anyone else's. It's not
17 to be given more weight or less weight simply because of
18 that status.

19 Is there anyone who thinks they will not be able
20 to apply this standard to all the witnesses including law
21 enforcement officers?

22 Is there anybody who would be unable or unwilling
23 to follow the law as given to you in the Court's
24 instructions, disregarding your own notions of what the
25 law is or what the law ought to be?

1 And the example that we usually use is that there
2 are a lot of people in our society that believe that the
3 possession of marijuana should be legalized. And if this
4 case had to do with possession of marijuana, which it does
5 not, and that was your view, that would not automatically
6 exclude you from sitting as a juror as long as you would
7 be willing to set aside that view and apply the law as the
8 Court gives it to you. Is anybody going to have a problem
9 or an issue with that?

10 If selected to sit on this case would any of you
11 be unable or unwilling to render a verdict based solely on
12 the evidence produced here in the courtroom?

13 A criminal prosecution is a very formalized
14 process that begins with the prosecutor filing specific
15 written criminal charges against the defendant. The
16 defendant has the opportunity to challenge those charges
17 by pleading not guilty and having a trial, and then it
18 becomes the burden of the State to prove those charges
19 beyond a reasonable doubt. And they have to do that with
20 evidence that they bring here into the courtroom before
21 the jury. And the jury cannot consider anything in making
22 its decision that has not been presented to them here in
23 the courtroom.

24 This is why once the jury is selected we tell
25 them don't go visit the site of the alleged offense and

1 don't refer to the Internet, don't try to find information
2 on there or in newspapers or any other reference manual
3 because you have to make your decision based only on what
4 the State brings into the courtroom. Is anybody going to
5 have an issue or a problem with that?

6 The law requires that the State prove the
7 defendant guilty beyond a reasonable doubt. The defendant
8 is presumed by law to be innocent. This means that the
9 defendant has no obligation and is not required to prove
10 his innocence nor is he required to present any evidence.
11 It's also the defendant's constitutional right to choose
12 whether he wishes to testify or not in this trial. If he
13 chooses not to testify, the jury cannot consider that in
14 any way in deciding guilt or innocence because that is an
15 exercise of his constitutional right. Is there anyone who
16 does not understand this principle of law or does not
17 think he will be able to apply it?

18 Do any of you know any other members of the jury
19 panel?

20 Seeing no hands. Ladies and Gentlemen, there are
21 some additional questions that I want to ask you that will
22 be on the easel here as soon as the bailiff turns it
23 around. These questions are not designed to pry into your
24 lives but the attorneys have the responsibility of
25 deciding who can be fair and impartial and they don't know

1 anything about you except what they hear here in the
2 courtroom and these questions are designed to help them in
3 that process.

4 Let me give you a little bit of direction as to
5 some of these. Number two, the area in which you reside.
6 We are not asking for your address but if you can tell us
7 the general area of the city or the county that you live
8 in. And you may describe that either by the nearest major
9 cross streets or an identifiable area of town, it could be
10 the university area or Vail or the northwest, something of
11 that nature.

12 Number three, your occupation. If you would
13 rather not name your employer, you need not do so. What
14 we are primarily interested in is the nature of your
15 employment.

16 Number five, if you have children or
17 grandchildren that are under 21, please tell us their age
18 and their gender. If they are over 21, you do not need to
19 mention them.

20 And number seven we will expand upon as we go
21 through and I think you will get a good idea of what we
22 are after. And Mr. Dingelidine, if you can start off,
23 please.

24 JUROR DINGELDINE: Stephen Dingelidine. I reside
25 in the 85747 district which is the Rita Ranch area, Vail

1 side. I'm retired air force for 21 years. I work for
2 Target dot com out at Rita Ranch for two years. I have
3 been divorced for five years, currently I have a fiance.
4 I have two children, eight and 19, both girls. I have sat
5 on a DUI, number six.

6 THE COURT: A DUI trial?

7 JUROR DINGELDINE: A DUI tour back 20 years ago.
8 And then I watch sports and read the newspaper.

9 THE COURT: Which newspaper, the Star?

10 JUROR DINGELDINE: Yes, I have a subscription.

11 THE COURT: What is your primary source of news?

12 JUROR DINGELDINE: Newspaper and Internet.

13 THE COURT: Any magazines you look at regularly?

14 JUROR DINGELDINE: Sports Illustrated.

15 THE COURT: Any entertainment television you like
16 not to miss on a daily or weekly basis?

17 JUROR DINGELDINE: Regular sports.

18 THE COURT: Mostly sports?

19 JUROR DINGELDINE: Yes.

20 THE COURT: Thank you, sir. Mr. Small.

21 JUROR SMALL: My name is Steve Small. I live
22 around Fruehauf and La Cholla. I am in construction, I do
23 finished carpentry. My wife is a pastry chef. I have
24 been working for my employer for six years. My wife has
25 been with her's for four. No children, never sat on a

1 jury. And I watch movies and read some books.

2 THE COURT: Any magazines or newspapers you look
3 at regularly?

4 JUROR SMALL: No.

5 THE COURT: What would you say your primary
6 source of news would be?

7 JUROR SMALL: TV.

8 THE COURT: One of the local channels or cable?

9 JUROR SMALL: Local.

10 THE COURT: Any particular shows on television
11 you like not to miss?

12 JUROR SMALL: Not for the most part.

13 THE COURT: Thank you, sir. Ms. Medina.

14 JUROR MEDINA: Amy Medina, I live in the
15 Sahuarita area. My occupation is a registered dental
16 hygienist. I have been doing that for about six years
17 now. My husband is a health and wellness manager at the
18 Rancho Sahuarita gym for about six months. And we have
19 two kids, a two and a half month old and a four year old.
20 And I have never been on a jury before.

21 I usually watch local news. Little things,
22 Biggest Loser, stuff like that are the only things I
23 really watch on TV.

24 THE COURT: What would you say your primary
25 source of news is?

1 JUROR MEDINA: Probably talk radio. Like 104.1.

2 THE COURT: Any magazines you look at regularly?

3 JUROR MEDINA: No.

4 THE COURT: Any particular television shows you
5 like not to miss for entertainment?

6 JUROR MEDINA: Not really. Project Runway, when
7 those types of shows are on. But nothing too particular.
8 I will miss and hit them here and there.

9 THE COURT: I guess the children have more effect
10 on your schedule than the TV?

11 JUROR MEDINA: Yes.

12 JUROR WARREN: My name is Paula Warren. I live
13 in Mid-Vale park. I work for a bank, I have worked there
14 for 33 years. I'm a service manager. I am not married.
15 I have two sons who are 18 today. And I have never been
16 on a jury. I watch television and I watch the news. I
17 watch Criminal Minds, CSI, everything.

18 THE COURT: All right. You indicated you watch
19 television news?

20 JUROR WARREN: Yes.

21 THE COURT: Would that be your primary source of
22 news?

23 JUROR WARREN: Local news. The morning channels,
24 yes.

25 THE COURT: Any magazines or newspapers you look

1 at regularly?

2 JUROR WARREN: I read the newspaper sometimes at
3 work if it is there on the table. Local news basically.

4 THE COURT: Thank you, ma'am. Mr. Benjamin.

5 JUROR BENJAMIN: Scott Benjamin. I live in the
6 Park Mall area. I design large optical systems for the
7 University of Arizona, I have been there about 16 years.
8 My wife is self employed as a personal trainer. I have
9 never sat as a juror before, never been chosen to sit.

10 Let's see. Reading, primarily trade magazines.
11 Motorcycle consumer news. A local one.

12 THE COURT: Your primary source of news?

13 JUROR BENJAMIN: Local TV channel or Internet.

14 THE COURT: And any entertainment television you
15 like to watch regularly?

16 JUROR BENJAMIN: Not really. If it is on, it is
17 in the background.

18 JUROR CAPUTO: My name is Linda Caputo. I live
19 in the Skyline/Campbell area and I am a legal secretary, I
20 have worked in that job about ten or eleven years.

21 THE COURT: What kind of a practice does that
22 attorney have?

23 JUROR CAPUTO: It is a bankruptcy firm.
24 Corporate bankruptcy. Not married. I have one daughter
25 and two grandchildren, eight and five. I did sit on a

1 criminal case about five years ago.

2 THE COURT: Do you recall the nature of the
3 charges and what the verdict was?

4 JUROR CAPUTO: It was a shooting. And the
5 verdict was, we couldn't find against the defendant beyond
6 a reasonable doubt.

7 THE COURT: So it was a not guilty verdict?

8 JUROR CAPUTO: Yes.

9 THE COURT: News?

10 JUROR CAPUTO: I watch the local news channel and
11 the Internet for news. Magazines, natural living kinds of
12 things, health kinds of things. TV, Good Wife, sit coms.

13 THE COURT: Any other sit coms that you watch
14 regularly?

15 JUROR CAPUTO: Sit coms?

16 THE COURT: Yes.

17 JUROR CAPUTO: I like them all. Things like
18 that, those half hour shows occasionally. Parenthood.
19 Romantic sit coms.

20 THE COURT: Thank you.

21 JUROR FOLEY: My name is Korrie Foley, I'm in the
22 Swan and Sunrise area. I am a biotech sales rep, 12 years
23 for Genatech. My husband is an attorney, he's with the
24 VA. I have two children, one is 13, one is 15. I have
25 never sat as a juror before. And so entertainment is Glee

1 and American Idol. And reading habits, non-fiction. News
2 is mostly CNN, NPR and online.

3 THE COURT: Any newspapers or magazines that you
4 look at regularly?

5 JUROR FOLEY: Not really.

6 THE COURT: Thank you. Mr. Bouley.

7 JUROR BOULEY: My name is Mike Bouley, I live in
8 the Wilmot and 22nd area. I have been with Cleveland
9 Maintenance for about 15 years. Not currently married.
10 No children. And I haven't sat on a jury before.

11 Internet, Sunday newspaper, local news, national news.

12 THE COURT: How about entertainment television,
13 any particular shows?

14 JUROR BOULEY: No. We watch Cops sometimes.

15 THE COURT: Thank you, sir. And Ms. Selsor.

16 JUROR SELSOR: My name is Katherine Selsor, I
17 work for Lewis Management, I manage home owner
18 associations, I have been doing that for about three
19 years. I'm divorced, no children, I have never sat on a
20 jury.

21 I like fiction, the Good Wife, Dexter, that's
22 about it.

23 THE COURT: What would you say your primary
24 source of news is then?

25 JUROR SELSOR: Internet.

1 THE COURT: Any magazines or newspapers you look
2 at regularly?

3 JUROR SELSOR: Yes, Cosmo.

4 THE COURT: All right, thank you. And Mr. Ryan.

5 JUROR RYAN: I'm Ken Ryan, I live in the lower
6 foothills near River and Campbell. I'm a retired
7 physician and professor at the University of Arizona
8 College of Medicine, 35 years. My field is, I had a
9 laboratory based position, my field is micropathology and
10 infectious diseases and I did hold a variety of
11 administrative positions in the various organizations in
12 the Health Sciences Center during my career.

13 My wife is a retired travel agent, she was in
14 that business for 20 years. Our children are grown. I
15 have not been impanelled as a juror.

16 My reading, my primary source of news, I read the
17 New York Times. I don't take a local paper any longer. I
18 do watch usually the TV news at 10:00 o'clock. The local,
19 mostly local news. I don't have any TV shows that I
20 follow although it's hard for me to avoid Law and Order
21 around my house because my wife watches almost every
22 episode.

23 THE COURT: Secondary exposure.

24 JUROR RYAN: Sort of like secondary smoke.

25 THE COURT: Any magazines you look at regularly?

1 MR. KLEIN: New Yorker.

2 THE COURT: Thank you, sir. Mr. Dougherty.

3 JUROR DOUGHERTY: Bernard Dougherty. I live near
4 Wrightstown and Camino Seco, northeast Tucson. I am a
5 lawyer, I practiced in Anchorage, Alaska for 20 years as a
6 tax lawyer and now I lecture in international law, mostly
7 in Europe. I live in Tucson but I am not here very often.

8 My wife was a legal administrator and now she
9 teaches English as a second language. I have two grown
10 children. I have never sat as a juror. I read a lot of
11 non fiction, I read the Economist, foreign affairs. The
12 newspapers, the local paper and the New York Times.

13 TV: NCIS, CIS, SCI, whatever, those kinds of
14 shows.

15 THE COURT: Thank you, sir. Mr. McClellan.

16 JUROR MCCLELLAN: I am James McClellan, I live in
17 Vail, 85641. I am currently unemployed, my last employer
18 was with the U. S. Census Department. I worked with them
19 for about two months. I worked as an enumerator.

20 I'm single. No children. Never been a juror
21 before. And TV habits and reading, I read the Arizona
22 Daily Star about every other day. And I watch local and
23 national news. Occasionally follow CNN. Watch the Daily
24 show. Colbert report. And then also just follow Internet
25 stuff. Typically like checking in with what is going on

1 with the ICC, the International Criminal Court.

2 THE COURT: How about entertainment television?

3 JUROR MCCLELLAN: Entertainment television, crime
4 dramas, comedies.

5 THE COURT: Any particular ones?

6 JUROR MCCLELLAN: N. C. I. S. comes to mind.

7 THE COURT: All right. Thank you. Mr. Scott.

8 JUROR SCOTT: My name is Charles Scott, I live
9 in the Broadway and Swan area. Right now I am a pool
10 cleaner at Progressive Pools, I have been there for about
11 a year. I'm single, I don't have any children. I have
12 not sat on a jury before.

13 I don't really read. I get Import Tuner and
14 truck magazines. I get other magazines. I mainly watch
15 Myth Busters, stuff on discovery, history channel, Colbert
16 report, Daley show, things like that

17 THE COURT: What is your primary source of news?

18 JUROR SCOTT: Morning, local television.

19 Sometimes CNN, not really, though.

20 THE COURT: Thank you. Ms. Dugdale.

21 JUROR DUGDALE: Pamela Dugdale. I live in the
22 northwest part of town. I am a clerk at the United States
23 Postal Service, I have been there for 27 years. Not
24 currently married. I have got an adult child and a four
25 year old grand child. I sat on a criminal trial in 2008

1 for sexual molestation, we found him guilty.

2 And then I was in traffic court probably about 25
3 years ago as a juror. And we found him guilty but I
4 couldn't tell you all the specifics.

5 I read the Daily Star. I watch local news. Read
6 fiction and non-fiction books. Consumer Reports, Time. I
7 work the swing shift so I don't see a whole lot of TV,
8 what is on when I get home is The Closer, Criminal Minds,
9 Cupcake Wars and Clean House, and it just depends on how
10 bored I am as to what I watch.

11 THE COURT: Thank you, Ms. Dugdale. Ms. Demers.

12 JUROR DEMERS: My name is Deirdre Demers. I live
13 in central Tucson, I am not employed right now, I'm a
14 student, I'm getting my masters in public health. I just
15 finished my first year doing that. I am not married, I
16 have one child, a son who is three and a half. I have
17 never sat as a juror before. All the reading I do is for
18 school, I don't read any newspapers or get any magazines.
19 I don't have a TV and I don't keep up on the news.

20 THE COURT: Any magazines or newspapers you look
21 at all?

22 JUROR DEMERS: No.

23 THE COURT: Thank you, ma'am. Ms. Agorastos.

24 JUROR AGORASTOS: My name is Maria Agorastos. I
25 live in Sahuarita. I do hair, I have been doing it for 13

1 years. I'm a divorced mother of a 14 year old. I have
2 never been on a jury before. I like to watch Locked Up.
3 I watch local news and read People and Gourmet magazine.

4 THE COURT: What is your primary source of news?

5 JUROR AGORASTOS: The television.

6 THE COURT: Local stations?

7 JUROR AGORASTOS: Yes.

8 THE COURT: Any newspaper you look at?

9 JUROR AGORASTOS: Once and awhile.

10 THE COURT: Thank you. Ms. Brenton.

11 JUROR BRENTON: Amy Brenton, I live in the Tucson
12 Mall area. I work for Flowing Wells school district. I
13 have been there seven years. I am basically a
14 kindergarten aide. My husband works for U. P. S. He has
15 been there 17 years. He has a combination sort of
16 clerical job there. I have two kids, 13 and 15. I have
17 never sat on a jury before and I read a lot of food and
18 fitness outdoor type stuff.

19 THE COURT: What would you say your primary
20 source of news is?

21 JUROR BRENTON: I get the Sunday paper.

22 THE COURT: Any other entertainment television
23 you watch regularly?

24 JUROR BRENTON: I don't watch TV.

25 THE COURT: All right. Thank you. Mr. De Leon.

1 JUROR DE LEON: Hello, I am Anthony De Leon. I
2 grew up and live on the eastside. I'm a full time student
3 at Pima. East campus. I am also employed parttime at In
4 and out. I am single, no kids, first time being summoned
5 for jury duty. And don't really watch too much TV.
6 Textbooks and Netflix and movies. I don't usually read
7 any news.

8 THE COURT: Do you watch any news on television
9 or get it on the Internet?

10 JUROR DE LEON: No, sir.

11 THE COURT: Do you have a particular area of
12 study at this point?

13 JUROR DE LEON: I'm starting my media arts degree
14 next semester.

15 THE COURT: Thank you. Ms. O'Brien.

16 JUROR O'BRIEN: Kathleen O'Brien, I live in
17 Marana, I have worked for an attorney for ten years now.
18 My husband works at Raytheon, he's a mechanical engineer,
19 he's been there like 11 years. No children, never sat as
20 a juror. And I like to read fiction and non-fiction and I
21 read the Daily Star on the weekend. And local news.

22 THE COURT: Local television news?

23 JUROR O'BRIEN: Yes.

24 THE COURT: Any magazines you look at regularly?

25 JUROR O'BRIEN: No.

1 THE COURT: Any entertainment television shows
2 you like not to miss?

3 JUROR O'BRIEN: People's Court, Judge Judy,

4 THE COURT: Well, we are going to do better than
5 that. You are setting the standard pretty low.

6 All right, thank you. Ms. Trujillo.

7 JUROR TRUJILLO: Karen Trujillo, I live in the
8 Alverson and Speedway area. I am a trainer, a wellness
9 trainer, self employed, I have been doing that since '88
10 but right now I am out of work. Not married. Two
11 children. Two adult children. I have never sat as a
12 juror. My reading is fiction. Non-fiction. I like to
13 watch light movies and light TV like Dancing With the
14 Stars. And my news is mainly just little blips on the
15 Internet.

16 THE COURT: Any magazines or newspapers you look
17 at regularly?

18 JUROR TRUJILLO: No.

19 THE COURT: Thank you, ma'am. Mr. Roe.

20 JUROR ROE: I'm Bill Roe, university area.

21 Recently I did a lot of natural resources consulting for
22 non-profit groups and state and local agencies. And then
23 more recently I have been heavily involved in political
24 campaigns more as a volunteer. My wife is a community
25 activist, neighborhood activist. I have two grown

1 children.

2 I have never sat as a juror before. And I watch
3 very little TV. Do I look at the New Yorker and the Times
4 and I get two or three different news clipping services
5 that cover Arizona and New Mexico politics.

6 THE COURT: Okay, thank you, sir.

7 Ladies and Gentlemen, I remind you that you have
8 the opportunity of coming up to the bench and responding
9 to questions up here if you feel the need to do so because
10 at this point I have to ask you if you or a close friend
11 or a relative has ever been arrested, charged or convicted
12 of anything other than a minor traffic offense? Mr.
13 Small?

14 JUROR SMALL: Wife, DUI.

15 THE COURT: About how long ago?

16 JUROR SMALL: A year.

17 THE COURT: In Pima County?

18 JUROR SMALL: Yes.

19 THE COURT: Misdemeanor DUI either in Justice
20 Court or City Court?

21 JUROR SMALL: No, it didn't go to trial. Set a
22 bond.

23 THE COURT: But it was in one of those courts do
24 you think?

25 JUROR SMALL: Yes.

1 THE COURT: All right. Anyone else? Mr.
2 Dougherty?

3 JUROR DOUGHERTY: Daughter in a drug related case
4 as a juvenile.

5 THE COURT: Okay. In Pima County?

6 JUROR DOUGHERTY: No, in Anchorage.

7 THE COURT: Mr. Ryan, did you have your hand up?

8 JUROR RYAN: Yes. Could I come up?

9 THE COURT: Please come up.

10

11 ((Whereupon there is an on-the-record bench
12 conference.))

13

14 JUROR RYAN: My son was arrested and convicted of
15 a felony and served four months in Arizona for a class six
16 felony.

17 THE COURT: What was the felony?

18 JUROR RYAN: It was called control of stolen
19 property, basically he stole it.

20 THE COURT: How long ago was it?

21 JUROR RYAN: It was 11 years ago.

22 THE COURT: In Pima County?

23 JUROR RYAN: Pima County.

24 THE COURT: Okay, thanks.

25

1 ((Whereupon the juror leaves the bench
2 conference.))

3

4 MR. KLEIN: Did you want to ask if he had any
5 hard feelings toward the State?

6 THE COURT: I will get into that in general with
7 them.

8 MR. KLEIN: I'm sorry, several times I looked
9 over and Mr. Roe appears like he may be dosing off.

10 THE COURT: All right. We will watch that.

11

12 ((End of bench conference.))

13

14 THE COURT: All right. Other hands?

15 JUROR MCCLELLAN: My cousin was arrested twice
16 for drunk driving. Once for aggravated assault.

17 THE COURT: Any of that in Pima County?

18 JUROR MCCLELLAN: No.

19 THE COURT: About how long ago?

20 JUROR MCCLELLAN: Not sure about the drunk
21 driving charges but aggravated assault was earlier this
22 year.

23 THE COURT: Okay. Ms. Demers.

24 JUROR DEMERS: My brother was arrested in high
25 school for theft and vandalism.

1 THE COURT: Was that in Pima County?

2 JUROR DEMERS: No, Pennsylvania.

3 THE COURT: Anyone else?

4 JUROR WARREN: My nephew was arrested for a drug
5 related offense and spousal abuse here in Pima County.

6 THE COURT: About how long ago?

7 JUROR WARREN: Recently.

8 THE COURT: Within the last year?

9 JUROR WARREN: Yes.

10 THE COURT: Is the case pending?

11 JUROR WARREN: Yes.

12 THE COURT: Anyone else?

13 Anybody that responded to that question, is there
14 anything about the association with the criminal justice
15 system by somebody you know or by yourself or a relative
16 that you think will have any effect on your ability to be
17 fair and impartial as a juror in this case?

18 Of course you understand the Pima County
19 Attorney's Office is the prosecuting authority in Pima
20 County. Do any of you have any ill feelings as a result
21 of any of these things that you have related to the Court,
22 any residual resentments against any part of the criminal
23 justice system, whether it's the police or courts or
24 defense attorneys or prosecutors or anything of that
25 nature? Ms. Warren?

1 JUROR WARREN: Yes.

2 THE COURT: Against whom?

3 JUROR WARREN: Well, it was something that was
4 said when he was in Court. By I guess the State.

5 THE COURT: By the prosecutor?

6 JUROR WARREN: Yes. Negative.

7 THE COURT: You thought it was unjustified or
8 inappropriate?

9 JUROR WARREN: Very much so.

10 THE COURT: Do you think that will have an effect
11 on your ability to be fair and impartial to the State
12 since they are represented by that same office?

13 JUROR WARREN: I wouldn't think so, no. No.

14 THE COURT: You don't think so?

15 JUROR WARREN: No.

16 THE COURT: Anyone else?

17 Let me ask the other side of that question. Have
18 any of you ever been the victim of a crime, ever had your
19 car stolen, your home burglarized, been assaulted,
20 anything of that nature? Mr. Scott.

21 JUROR SCOTT: I was a victim of a home invasion.

22 THE COURT: How long ago?

23 JUROR SCOTT: Two years ago.

24 THE COURT: In Pima County?

25 JUROR SCOTT: Yes.

1 THE COURT: What was the result, was someone
2 prosecuted?

3 JUROR SCOTT: No.

4 THE COURT: All right. Ms. Dugdale.

5 JUROR DUGDALE: I had a car stolen.

6 THE COURT: About how long ago?

7 JUROR DUGDALE: 2001.

8 THE COURT: Okay. Mr. McClellan.

9 JUROR MCCLELLAN: I was stabbed in middle school
10 with a pencil. Yeah.

11 THE COURT: Okay. Thank you.

12 JUROR O'BRIEN: My car was stolen about 15 years
13 ago.

14 THE COURT: All right. Anybody else? Mr. Ryan.

15 JUROR RYAN: Home invasion 25 years ago. No
16 arrests. Identity theft, two years ago. And that one was
17 solved.

18 THE COURT: Okay. Mr. Small, did you have your
19 hand up?

20 JUROR SMALL: Car stolen about seven years ago.
21 Home invasion about two years ago. No arrests.

22 THE COURT: Okay. Mr. De Leon.

23 JUROR DE LEON: House was robbed like two years
24 ago. No prosecution.

25 THE COURT: Any other hands? Ms. Warren?

1 JUROR WARREN: My house was robbed about eight
2 years ago.

3 THE COURT: Anybody that responded to that
4 question, is there anything about the circumstances of
5 what you related, being the victim of a crime that you
6 think would have any effect on your ability to be fair and
7 impartial as a juror?

8 Okay. Have any of you ever worked in a jail or a
9 prison facility of any kind?

10 JUROR FOLEY: Can I clarify? In my present
11 position actually the Department of Corrections is one of
12 my major customers so I am out there a fair amount, at
13 least four to six times a year.

14 THE COURT: When you go out, what do you do out
15 there?

16 JUROR FOLEY: Usually just educational type
17 stuff.

18 THE COURT: Of what nature?

19 JUROR FOLEY: Medical education, training of
20 staff.

21 THE COURT: Staff rather than inmates?

22 JUROR FOLEY: Right, no inmates.

23 THE COURT: About how long have you been doing
24 that?

25 JUROR FOLEY: Three years.

1 THE COURT: Is it just one facility that you go
2 to?

3 JUROR FOLEY: All of them. Mostly, depending on
4 where it is. The one here in Tucson, there's a major spot
5 that you go to within all of them and then Florence.

6 THE COURT: Is there anything about that work
7 experience that you think might make it difficult for you
8 to sit as a fair and impartial juror given the fact that
9 this alleged offense occurred within the prison system?

10 JUROR FOLEY: No.

11 THE COURT: Okay. And Mr. Bouley.

12 JUROR BOULEY: I had to fix an air conditioner
13 for Pima College, it was a portable unit in the parking
14 lot at the Wilmet prison.

15 THE COURT: Okay, a one time situation?

16 JUROR BOULEY: A couple of times. It wasn't
17 actually in the prison.

18 THE COURT: About how long ago?

19 JUROR BOULEY: Probably about five years ago.

20 THE COURT: Anybody else?

21 Have any of you taken your children to see an eye
22 doctor since 2004?

23 JUROR WARREN: Yes.

24 THE COURT: Do you remember about how long ago?

25 JUROR WARREN: Two years ago.

1 THE COURT: Do you remember who the doctor was?

2 JUROR WARREN: Dr. Flores.

3 THE COURT: Ms. Medina.

4 JUROR MEDINA: When my son was born he had a
5 bacterial infection, so I don't remember anything about
6 it, it was just a couple months ago.

7 THE COURT: Anybody else? Ms. Agorastos?

8 JUROR AGORASTOS: I take him every year, we go
9 every year, I just go to different doctors, I don't
10 remember their names.

11 THE COURT: Just for a normal yearly eye exam?

12 JUROR AGORASTOS: Yes.

13 THE COURT: Do any of you have any experience in
14 boxing or wrestling?

15 MR. DIEBOLT: Judge, you had one more response.

16 THE COURT: I'm sorry, I didn't see your hand.

17 JUROR BRENTON: I take my daughter for an eye exam
18 every year.

19 THE COURT: Usually you go to the same place?

20 JUROR BRENTON: Usually we go to Occidental
21 Vision.

22 THE COURT: So it's not always the same doctor?

23 JUROR BRENTON: Not always the same doctor.

24 THE COURT: Wrestling and boxing, anybody have
25 any experience?

1 JUROR MCCLELLAN: Just wrestling in middle school
2 and high school for P. E.

3 JUROR MEDINA: My husband was a wrestling coach
4 for a middle school. That was his main thing, he likes
5 it, it is his hobby.

6 THE COURT: How long has it been since he
7 coached?

8 JUROR MEDINA: Just last year he coached. This is
9 his first year not doing it.

10 THE COURT: Okay. Mr. De Leon.

11 JUROR DE LEON: I work out at a boxing gym.

12 THE COURT: Okay. Anybody else? Do any of you
13 have any medical training other than what you have
14 mentioned already? Ms. Medina?

15 JUROR MEDINA: Just CPR, things like that. Is
16 that what you are talking about?

17 THE COURT: I meant more formal medical training.

18 JUROR MEDINA: Okay, no.

19 THE COURT: Okay. Have any of you ever
20 volunteered to do volunteer work? Are you now or have you
21 ever for any organizations?

22 JUROR MCCLELLAN: At the local Tucson Democratic
23 Party. The Arizona Trail Association, the Tucson Book
24 Fair. And there's one more but it's escaping me right
25 now.

1 JUROR MEDINA: Just working whenever they had it
2 over at the Tucson Mall Park, that big medical community
3 to help the homeless, I just cleaned teeth that day.

4 THE COURT: Okay. Mr. Dougherty.

5 JUROR DOUGHERTY: For the American Red Cross and
6 the German Red Cross but as a lecturer and also for the
7 Alaska Aids Association.

8 THE COURT: All right. Ms. Brenton.

9 JUROR BRENTON: I volunteer at my kids' schools
10 and also local food coop.

11 JUROR DE LEON: I volunteer every year wherever I
12 can, school related, band related. Whatever it may be.

13 THE COURT: Okay. Ms. Demers.

14 JUROR DEMERS: Previously at different types of
15 social service agencies on the east coast and here in
16 Tucson, the International Rescue Committee.

17 THE COURT: All right. Mr. Benjamin.

18 JUROR BENJAMIN: Revolutionary War Veterans
19 Association.

20 THE COURT: Okay. And Mr. Ryan.

21 JUROR RYAN: Mostly in the arts, I served on the
22 board for the Arizona Opera Company and the Arizona
23 Theater Company and I give preview lectures for the opera.

24 THE COURT: Anyone else? Mr. Roe.

25 JUROR ROE: Conservation groups and political

1 candidates.

2 THE COURT: Do any of you have any business or
3 social connection with anyone in the U. S. Attorney's
4 Office or the County Attorney's Office or any other
5 prosecuting office other than what you may have mentioned
6 like Mr. Dingel d i n e? Mr. Bouley?

7 JUROR BOULEY: My cousin used to be married to
8 Richard Kingston. He used to be a prosecutor I believe.

9 THE COURT: Your cousin used to be married to
10 him?

11 JUROR BOULEY: Yes, used to be.

12 THE COURT: Okay. Ms. Demers.

13 JUROR DEMERS: I'm sorry, this is vague, I think
14 my sister during her schooling interned with a district
15 attorney but I'm not sure.

16 THE COURT: Mr. Roe, did you have your hand up?

17 JUROR ROE: I know the U. S. Attorney for
18 Arizona, I have worked with him previously.

19 THE COURT: Okay. Mr. Burke is it?

20 JUROR ROE: Yes.

21 THE COURT: Anyone else?

22 Any of you who just answered that question, is
23 there anything about your association with someone in one
24 of those offices that would have any effect on your
25 ability to be fair and impartial?

1 Have any of you ever been a witness to a
2 criminal act ever? Where you were called to testify?

3 Ever been a witness to a criminal act that you
4 were not called to testify? For whatever reason it never
5 got to Court but still you witnessed something and maybe
6 you reported it to the police? Mr. Benjamin?

7 JUROR BENJAMIN: Hit and run.

8 THE COURT: How long ago was that?

9 JUROR BENJAMIN: Probably about 18 years ago.

10 THE COURT: Mr. Roe.

11 JUROR ROE: Forty years ago when I lived in
12 Taiwan there was a neighborhood incident with young
13 children interfering with construction workers and the
14 foreign affairs police were called in.

15 THE COURT: Okay. Anybody else?

16 Ladies and Gentlemen, I think that's all the
17 questions I intend to ask you. I like to always give you
18 a chance to tell us something we may have missed because
19 sometimes jurors don't give information because we don't
20 ask the right question. So is there anything that you can
21 think of that you would want to know if you were one of
22 the lawyers trying to decide whether you could be fair and
23 impartial in this case that we have not gotten into? Mr.
24 McClellan.

25 JUROR MCCLELLAN: My aunt is currently employed

1 with the Iowa State Correctional facility as a nurse.

2 THE COURT: Do you have much contact with her?

3 JUROR MCCLELLAN: I hear stuff from my mother
4 about her about weekly.

5 THE COURT: Okay. Mr. Dingelidine.

6 JUROR DINGELDINE: My fiance is an ex
7 correctional employee and her ex-husband was in a
8 correctional position.

9 THE COURT: Did your fiance work in Arizona in
10 the Arizona criminal justice system?

11 JUROR DINGELDINE: Florence.

12 THE COURT: For about how long?

13 JUROR DINGELDINE: About a year maybe.

14 THE COURT: How long has it been since she worked
15 there?

16 JUROR DINGELDINE: About 13 years.

17 THE COURT: Anyone else? I am going to give the
18 opportunity to the attorneys to ask additional questions
19 if they have any. Mr. Diebolt.

20 MR. DIEBOLT: Thank you. Ms. Warren, I want to
21 ask you a question. I heard you a few minutes ago talk
22 about this but I didn't really catch everything you said
23 about something else that happened.

24 JUROR WARREN: It was something that was said in
25 Court by the attorney to his wife and his son was there.

1 That said that they had gotten him, like we got him. And
2 they were having problems, which I don't want to get into
3 but the comment that was made, when it was said I felt it
4 wasn't appropriate for his position, you know.

5 MR. DIEBOLT: Did you say that that person that
6 you are describing was a prosecutor in a Court hearing or
7 a Court trial?

8 JUROR WARREN: Yes. Well, it was on the outside.

9 MR. DIEBOLT: Oh, I see. Outside of Court?

10 JUROR WARREN: Yes.

11 MR. DIEBOLT: You felt that, correct me if I am
12 wrong, you felt that that was inappropriate type of
13 behavior?

14 JUROR WARREN: Yes, I did.

15 MR. DIEBOLT: I think the judge asked you if that
16 would impact your ability to sit here and make a decision
17 based on this case?

18 JUROR WARREN: Well, this is a different
19 environment. And the case itself is different.

20 MR. DIEBOLT: I'm not the prosecutor.

21 JUROR WARREN: No, you are not.

22 MR. DIEBOLT: Mr. Roe, did I write things down
23 correctly, I wrote here politics. So you seem to be
24 politically active, that seems to be a big part of your
25 life?

1 JUROR ROE: That is correct.

2 MR. DIEBOLT: Is it political activism, I don't
3 want to put you on the spot, that you participate in or do
4 you mean like being a part of the political process?

5 JUROR ROE: I work with a lot of candidates and
6 help advise them in fund raising and strategy in
7 particular.

8 MR. DIEBOLT: And this next question may be a
9 little awkward. You do it because you enjoy it, you like
10 doing that?

11 JUROR ROE: I do enjoy it but I have strong
12 convictions as well.

13 MR. DIEBOLT: Would those strong convictions have
14 any impact that you could anticipate in a trial such as
15 this?

16 JUROR ROE: I don't think so.

17 MR. DIEBOLT: I just have a general question for
18 everyone and then I will sit down. Obviously you know
19 that both of these individuals were incarcerated in the
20 Department of Corrections at the time of this incident,
21 they were prisoners. Would that have any direct impact on
22 your ability to still listen to what happened?

23 Let me put it another way. Do you think by
24 being a prisoner all your rights have been taken from you?
25 Enough that you couldn't sit there and be fair and

1 impartial?

2 One more thing. Because they are in prison, the
3 heck with them, they deserve what they get; anybody have
4 that mentality such that you can't make a decision based
5 on the evidence presented? Anyone?

6 Thank you for your time.

7 THE COURT: Mr. Klein.

8 MR. KLEIN: Thank you. I don't have a good
9 memory, I am going to have use notes. Let me ask you a
10 couple more questions similar to those on the board.
11 First of all I think a couple of you mentioned that you
12 listen to talk radio, I think somebody mentioned 104.1.
13 Is there anyone who didn't mention it who tends to listen
14 to talk radio on a fairly regular basis? Mr. McClellan?

15 JUROR MCCLENNAN: Yes, I occasionally listen to
16 NPR when I am in the car.

17 MR. KLEIN: Anybody else? Ms. Foley?

18 JUROR FOLEY: Yes.

19 MR. KLEIN: Ms. Selsor?

20 JUROR SELSOR: Yes, when I am with my dad he
21 makes me listen to Rush Limbough.

22 MR. KLEIN: Okay. Mr. Dingelidine?

23 JUROR DINGELDINE: Dave Justice. Is that the
24 right name? It is a morning show.

25 MR. KLEIN: Can I move closer, Judge?

1 THE COURT: Yes.

2 MR. KLEIN: I'm sorry, you listen to?

3 JUROR DINGELDINE: Once in a blue moon I listen
4 to talk radio like Dave Justice in the morning.

5 MR. KLEIN: Anybody else? Next question. Some
6 judges ask and some judges don't. Any of you have bumper
7 stickers on your cars or personal trucks or anything like
8 that? Mr. Roe?

9 JUROR ROE: Presidential candidate from the last
10 presidential election.

11 MR. KLEIN: Anyone else?

12 JUROR DOUGHERTY: On one of our cars we have a
13 bumper sticker in support of Planned Parenthood.

14 MR. KLEIN: Anybody else?

15 All right. Have any of you ever filed a civil
16 lawsuit where you are suing somebody else?

17 JUROR DUGDALE: I guess it was civil. Where I was
18 in a car accident.

19 MR. KLEIN: And you are trying to collect
20 damages?

21 JUROR DUGDALE: Yes.

22 MR. KLEIN: Flip side of that, have any of you
23 ever been sued by somebody else? A good example is if you
24 are in a car accident, somebody says it is your fault and
25 they sue you. Have any of you ever been sued? Ms Medina?

1 JUROR MEDINA: I don't know if this is the right
2 answer.

3 MR. KLEIN: Whatever your answer is is right.

4 JUROR MEDINA: I am in proceedings, not really
5 proceedings but I am getting my wages garnished for like
6 credit cards, so I don't know if that counts.

7 MR. KLEIN: Mr. Dougherty, did you have your hand
8 up?

9 JUROR DOUGHERTY: Yes, by a client for
10 mal practice.

11 MR. KLEIN: Okay. Anybody else?

12 Does anybody have any physical problem, hearing,
13 vision, any sort of physical problem that will interfere
14 with you sitting in Court for like one and a half hours,
15 two hours at a time? Mr. Scott?

16 JUROR SCOTT: I have trouble paying attention for
17 long periods of time. I used to take Ritalin but I don't
18 take it any more

19 MR. KLEIN: Have you had difficulty paying
20 attention so far today?

21 JUROR SCOTT: Not really.

22 MR. KLEIN: Because this is generally about the
23 length of time that we would go and then take a break. Do
24 you think you would be able to do that?

25 JUROR SCOTT: Probably.

1 JUROR CAPUTO: I'm having trouble hearing.

2 MR. KLEIN: So am I.

3 JUROR CAPUTO: It is the environment. The
4 ventilation.

5 MR. KLEIN: Can you hear me okay?

6 JUROR CAPUTO: I can hear you okay, I can't hear
7 this gentleman very well.

8 MR. KLEIN: Mr. Diebolt? That's okay. I'm just
9 kidding. It is important to be able to hear everybody but
10 we know now that we should talk a little louder so we can
11 be heard over the ventilation system.

12 Anyone else have any other physical problems that
13 would make it difficult to sit one and a half, two hours
14 at a time?

15 Okay. I think I basically have like only two or
16 three more questions and they are going to sound fairly
17 stupid, not to imply that the other questions didn't sound
18 stupid too, but these are sort of experiences that
19 sometimes lawyers have and we want to make sure that we
20 don't have those experiences repeat themselves.

21 So my first question is, is there anything about
22 my physical appearance, Ms. Bensley's physical appearance,
23 Jeff's physical appearance, Mr. Diebolt's physical
24 appearance that makes you at all feel uneasy about serving
25 on the jury? Either you think just looking at the lawyer

1 you can't believe the lawyer; anything at all that makes
2 you feel uneasy or makes you feel like you can already
3 judge the result in this case?

4 Mr. McClellan, is that what you mentioned before?

5 JUROR MCCLELLAN: No, it's the facial tattoo, it
6 just stands out to me.

7 MR. KLEIN: Okay. Is that going to affect your
8 ability to sit fairly and impartially?

9 JUROR MCCLELLAN: I don't think so but I just
10 thought I should mention it.

11 MR. KLEIN: Sure, I appreciate that. Anybody
12 else have a similar feeling, seeing the tattoos on Jeff's
13 face? Okay. I won't finish the question. Let me start
14 in the back row. Ms. Selsor?

15 JUROR SELSOR: Yes.

16 MR. KLEIN: Okay. What feeling does it give to
17 you? Does it make you afraid?

18 JUROR SELSOR: No, I just don't think it's very
19 professional or it is not something that is for me.

20 MR. KLEIN: Would the fact that Jeff has tattoos
21 affect your ability to sit fairly in this case?

22 JUROR SELSOR: I don't think so.

23 THE COURT: That's the only question he's getting
24 at here. Is it going to affect your ability to sit fairly
25 and impartially as a juror. So you can go ahead, Mr.

1 Klein.

2 MR. KLEIN: Who else in the back row? I think
3 there were a couple other people.

4 JUROR WARREN: It wouldn't affect my ability to
5 be fair, though.

6 MR. KLEIN: That was Ms. Warren. Was there
7 anyone else? Middle row? Is it Ms. Agorastos?

8 JUROR AGORASTOS: Yes. But it just makes you
9 feel like he might be guilty but I'm not going to judge
10 him just for the appearance, you know.

11 MR. KLEIN: Okay. Let me put it to you this way.
12 Sitting here, you haven't heard any evidence yet, you know
13 he's presumed to be not guilty, but seeing his tattoo,
14 does that make you think he's guilty?

15 JUROR AGORASTOS: It may. But I already know
16 that it is just a tattoo.

17 MR. KLEIN: So you can put that aside? The Court
18 reporter has to have an answer.

19 JUROR AGORASTOS: Yes.

20 MR. KLEIN: Okay. Anybody else in the middle
21 row? In the front three?

22 Okay. Last question. Does anybody think that
23 they have any sort of psychic or intuitive ability to tell
24 whether somebody is guilty or not guilty, telling the
25 truth or not telling the truth or anything like that?

1 Okay. Thank you very much for your attention.

2 THE COURT: Do counsel pass the panel for cause?

3 MR. KLEIN: Can we approach, Your Honor.

4 THE COURT: Yes, you may.

5

6 ((Whereupon there is an on-the-record bench
7 conference.))

8

9 MR. KLEIN: I would like to request that the
10 Court strike Ms. Medina particularly since she indicated
11 that her wages are being garnished for credit card bills.
12 And likewise at this point now the Court knows with the
13 exception of her I don't think there is any problem with
14 any of jurors so we do have additional jurors available.
15 That was one of the concerns that the Court had before.
16 But I think given her expressed concern about finances and
17 the fact that her wages are being garnished and that she
18 needs to work.

19 THE COURT: Oh, I see, I was wondering what your
20 point was but it has to do with her financial situation.

21 MR. DIEBOLT: He could strike her.

22 THE COURT: Pardon?

23 MR. DIEBOLT: He can use a strike.

24 THE COURT: Yes, he could. This is one of those
25 situations where it appears we have got plenty more, then

1 we have to go through four more people to get one seat, to
2 get somebody seated. But I think it is a fair comment, we
3 have moved along so it does sound like it will be a
4 financial burden on her, so all right.

5 MR. KLEIN: Thank you.

6

7 ((End of bench conference.))

8

9 THE COURT: Ms. Medina, we are going to excuse
10 you and ask you to report back to the jury commissioner's
11 office on the first floor. Thank you very much for being
12 here and your willingness to serve as a juror.

13 And we will fill number three.

14 THE CLERK: Teresa Curtis.

15 THE COURT: Ms. Curtis, have you heard the
16 questions that I have asked so far?

17 JUROR CURTIS: Yes, I have.

18 THE COURT: Would you have any yes answers to any
19 of the questions that I have asked?

20 JUROR CURTIS: The one about a relative that had
21 criminal charges. I have a nephew who was arrested for
22 DUI and served some time.

23 THE COURT: About how long ago?

24 JUROR CURTIS: A few years ago in Maricopa
25 County.

1 And with regard to volunteering, I volunteer for
2 Junior Achievement every week and I volunteer for the
3 Humane Society.

4 JUROR CURTIS: Yes.

5 THE COURT: Would you respond to the board then.

6 JUROR CURTIS: My name is Teresa Curtis, I live
7 on the far east side, Broadway and Houghton. I work for
8 Raytheon and I'm attached to a military unit on D. M. I
9 have been there for two months as a material planner.

10 I am a widow, my children are grown. I have a
11 grand-daughter who is five. I have not been selected to
12 sit on a jury. I have a few authors that I like to read.

13 TV viewing, I'm a channel surfer, I watch a lot of
14 cable TV. I just pick up at random a lot of different
15 things that catch my interest. I don't read the
16 newspaper, I don't watch television news, if I hear from
17 somebody about something, I will do some research on it
18 but I don't typically pay attention to the daily news at
19 all.

20 THE COURT: Would that research include the
21 Internet?

22 JUROR CURTIS: Sometimes I look up things on the
23 Internet or if I hear of a story I will watch the news on
24 purpose on a particular day to get more information.

25 THE COURT: Any newspapers or magazines that you

1 read?

2 JUROR CURTIS: Gui deposit is about the only one.

3 THE COURT: Any entertainment television?

4 JUROR CURTIS: I do like the half hour comedies,
5 the Thursday night lineup.

6 THE COURT: What would that be?

7 JUROR CURTIS: It is like The Office and
8 Community and Out Source. Half hour comedies all night.

9 THE COURT: Thank you. No other yes answers to
10 anything else?

11 JUROR CURTIS: No, I don't believe so.

12 THE COURT: Counsel pass the panel for cause?

13 MR. KLEIN: Yes, Your Honor.

14 MR. DIEBOLT: Yes, Your Honor.

15 THE COURT: That means, Ladies and Gentlemen,
16 that all of you have been found to be fair and impartial.
17 What we have left to do is to shrink your number down to
18 the eight people plus one alternate that will actually sit
19 as jurors. And in order to accomplish that we will take a
20 recess and we will ask all of you that have been
21 responding to questions, everybody seated up here to
22 return back to the courtroom, it is about 25 minutes after
23 12 now, at 1:45. 1:45.

24 And during this recess please do not discuss the
25 case, the little you know about it with each other or with

1 anybody else. Keep an open mind, take with you all your
2 personal possessions. And those of you who have not been
3 responding to questions should report back to the jury
4 commissioner's office on the first floor, your
5 participation in this particular trial is now at an end,
6 thank you very much for being here.

7 The record will show the absence of the jury, the
8 presence of counsel and the defendant. Counsel, I would
9 ask that you exercise your strikes before you take your
10 own lunch recess. Anything else before we recess?

11 MR. KLEIN: No. Oh. We don't need to decide it
12 now but when we were talking about the nature of the prior
13 conviction for Mr. Schwartz, there's also the guilty plea
14 that he made that specifically does refer to fraud or
15 deceit. And so I think that the nature of that guilty
16 plea is relevant, but again that's just something we can
17 talk about later.

18 THE COURT: What specifically was it, that's the
19 federal charge you are talking about?

20 MR. KLEIN: Right. That was conspiracy to
21 control, to obtain a controlled substance by fraud or
22 deceit.

23 THE COURT: Okay. All right. The Court will be
24 in recess.

25

1 ((Whereupon the noon recess is taken and the
2 trial proceeds as follows.))

3

4 THE COURT: The record will show the presence of
5 counsel and the defendant and the absence of the jury
6 panel. Anything before we bring the jury in, counsel?

7 MR. KLEIN: Judge, I did want to follow-up on the
8 issue about the guilty plea. I believe Ms. Bensley tends
9 to refer to it in her opening statement. And given the
10 fact that the nature of the crime inherently deals with
11 fraud and deceit, I think it is appropriate for the jury
12 to hear the actual charge on that count.

13 THE COURT: Mr. Diebolt.

14 MR. DIEBOLT: Judge, I would object to that.
15 Originally I objected to the plea agreement being referred
16 to or introduced into evidence. There was never a
17 conviction for that. In fact is there has to be a
18 conviction for that to happen. Fraud isn't necessarily a
19 crime of moral turpitude, nor has it been determined to be
20 a crime of dishonesty.

21 So based on those factors I would ask the Court
22 to not allow counsel to go into it, a plea agreement that
23 was never entered into as a conviction. And certainly not
24 the nature of it.

25 THE COURT: The Court will permit the impeachment

1 of the defendant based on his admission of guilt with
2 regard to a crime involving fraud. Anything else?

3 MR. KLEIN: No, Your Honor. Oh, I'm sorry, we
4 are going to invoke the rule. Sergeant Gonzales from the
5 Department of Corrections is here. She wasn't listed by
6 the State as a witness.

7 THE COURT: Anybody who expects or intends to be
8 a witness in the case must stay outside the courtroom
9 until you are called as a witness. You may bring them in.

10 THE BAILIFF: Your Honor, the jury panel.

11 THE COURT: Please be seated. The record will
12 show the presence of the jury, counsel and the defendant.

13 Ladies and Gentlemen, the clerk will now call the
14 names of those selected to sit as jurors in this case. As
15 your name is called, please come forward and have a seat
16 as directed by the bailiff.

17 THE CLERK: Teresa Curtis.

18 Paul a Warren.

19 Scott Benjamin.

20 Korrie Foley.

21 Michael Bouley

22 Katherine Sel sor.

23 Charles Matthew Scoot.

24 Amy Brenton.

25 Anthony De Leon.

1 THE COURT: Those who were not selected to sit as
2 jurors should report back to the jury commissioner's
3 office on the first floor. We thank you for your
4 participation in this process here today and for your
5 willingness to sit as jurors. You are now excused.

6 And Ladies and Gentlemen, those who have been
7 selected, if you would please stand and face the courtroom
8 clerk and raise your right hand to be sworn as jurors.

9

10 ((Whereupon the jurors are sworn.))

11

12 THE COURT: Please be seated. Ladies and
13 Gentlemen, you have had handed out to you a three ring
14 notebook that includes the Court's preliminary
15 instructions which are on blue paper and I will read those
16 instructions to you now and ask you to read them along
17 with me. You will have these instructions throughout the
18 trial so you can refer back to them at any time you would
19 like.

20 Ladies and Gentlemen, now that you have been
21 sworn, I will tell you something about your duties as
22 jurors and give you some instructions in an effort to help
23 assure a fair trial. At the end of trial after you have
24 heard all the evidence I will give you more detailed
25 instructions and those instructions will control your

1 deliberations.

2 If you have any questions about these
3 instructions, did not hesitate to ask for clarification.

4 The following rules govern your conduct as jurors
5 during the trial. I am going to give you some dos and
6 don'ts, mostly don'ts, which I will call the admonition.

7 Do not reach any conclusions about any fact or
8 about the outcome of the case until you have heard all the
9 evidence, the closing arguments and the final instructions
10 on the law. Form your final opinions only after you have
11 had an opportunity to discuss the case with each other in
12 the jury room at the end of the trial.

13 Do not discuss the case. Do not discuss the
14 evidence with each other until all the evidence has been
15 presented and you have retired to deliberate on the
16 verdict at the end of trial. Until that time you should
17 not discuss any aspect of the case with each other. If
18 you have a question or need additional information, submit
19 your request in writing and I will discuss it with the
20 attorneys.

21 Do not talk to anybody about the case or about
22 anyone who has anything to do with it, and do not let
23 anyone talk to you about those matters, until the trial
24 has ended and you have been discharged as jurors. This
25 prohibition about not discussing the case includes

1 communicating with anyone about the case using e-mail,
2 Facebook, MySpace, Twitter, instant messaging, Blackberry
3 messaging, I-Phones, I-Touches or any other form of
4 electronic communication. You are not permitted to blog
5 about the case or your experience as a juror on this case
6 until the trial has ended and you have been discharged as
7 jurors. Until then you may tell people that you are on a
8 jury, and you may tell them the estimated length of the
9 trial, but do not tell them anything else except to say
10 you can't talk about it until the trial is over.

11 It is your duty not to speak with or permit
12 yourselves to be addressed by any person on any subject
13 connected with this trial. This includes the lawyers, the
14 parties, witnesses and spectators. If someone should try
15 to talk to you about the case, stop him or her and walk
16 away. If you should overhear others talking about the
17 case, stop them or walk away. If anything like this does
18 happen, report it to me or a member of my staff as soon as
19 you can.

20 To avoid even the appearance of improper conduct,
21 do not talk to any of the other parties, lawyers,
22 witnesses, the spectators or media representatives about
23 anything until the case is over, even if your conversation
24 with them has nothing to do with the case. If you
25 inadvertently have contact in the hallways or elevators

1 going to or from the courtroom, there is nothing wrong
2 with saying good morning or good afternoon, but your
3 conversation should end there. In no other way can the
4 parties be assured of the absolute fairness they are
5 entitled to expect from you as jurors.

6 The lawyers and parties have been given the same
7 instructions you have about not speaking with you. If the
8 attorneys, parties or witnesses do not acknowledge you
9 outside of the courtroom, or avoid riding with you in the
10 elevator, they're not being rude, they're just following
11 this rule forbidding contact.

12 Please instruct family and friends not to enter
13 the courtroom or hallway in front of the courtroom for any
14 reason during trial. If you arrange to meet family or
15 friends at the courthouse during trial, please meet them
16 on the 1st floor or outside the courthouse.

17 In order to minimize the risk of accidentally
18 overhearing something about the case, I ask that you wear
19 your juror badges in and around the courthouse so people
20 will recognize you as jurors.

21 Each of you has gained knowledge or information
22 from the experiences you have had prior to this trial.
23 Once this trial has begun, you are to determine the facts
24 of this case only from the evidence that is presented in
25 this courtroom. Arizona law prohibits a juror from

1 receiving evidence not properly admitted at trial.
2 Therefore, do not do any research or make any
3 investigation about the case on your own. Do not view or
4 visit the locations where the events of the case took
5 place. Do not consult any source such as a newspaper, a
6 dictionary, a reference manual, television, radio or
7 Internet for information.

8 If you have a question or need additional
9 information, submit your request in writing and I will
10 discuss it with the attorneys.

11 There may or may not be news media coverage of
12 this trial. If there is, do not read, watch or listen to
13 any newspaper, television, Internet or radio accounts. If
14 you inadvertently see, hear or read something about the
15 case, end your exposure to it immediately and please let
16 the bailiff or me know as soon as possible.

17 If you have cell phones, laptops or other
18 communication devices, please turn them off and do not
19 turn them on while in the courtroom. You may use them
20 only during breaks as long as you do not use them to
21 communicate about any matter having to do with this case.
22 You are not permitted to take notes with laptops,
23 blackberries, tape recorders or any other electronic
24 device. You are only permitted to take notes on the
25 notepad provided by the Court. Devices that can take

1 pictures are prohibited and may not be used for any
2 purpose.

3 During the trial I suggest that you avoid
4 alcoholic beverages in favor of caffeinated beverages
5 during the noon recess in order to help you stay alert
6 during the afternoon.

7 These rules of conduct are very important and a
8 violation of any of these rules by anyone could force a
9 retrial of the entire process.

10 Before each recess I probably will not repeat the
11 entire admonition I have just given to you. I will
12 probably give you some shortened version as a reminder.
13 However, even if I forget to make any reference to it,
14 remember that the admonition still applies at all times
15 during the trial.

16 Writing pads and pens have been provided for your
17 use in taking notes. They are located in the juror
18 notebooks.

19 These notebooks should not leave the courtroom
20 but should be left on your seats during recesses. Take as
21 many or as few notes as you wish to help you remember the
22 testimony, but do not let note taking distract you from
23 hearing and seeing the evidence as it is presented.
24 Transcripts will not be provided, nor is testimony likely
25 to be repeated after a witness has been excused from the

1 witness stand.

2 Whether you take notes or not, you should rely on
3 your own memory of what was said and not be overly
4 influenced by the notes of other jurors. You may not
5 share your notes with your fellow jurors until you
6 deliberate at the end of the case. At all other times the
7 notes will be kept confidential. No one but you and the
8 bailiff will have access to them. After you have reached
9 a verdict, the bailiff will destroy your notes.

10 Criminal trials usually proceed in this order.

11 The prosecutor who represents the State will make an
12 opening statement previewing the case. The defendant's
13 attorney may give an opening statement either immediately
14 after the State's opening or after the State has presented
15 its evidence. These statements are not evidence. They
16 are statements of what each side thinks the evidence will
17 be and it is hoped that they will help you understand and
18 follow the evidence that will be presented.

19 The State will present its evidence, the defense
20 is not required to present any evidence but may do so. If
21 the defendant does present evidence, the State may then
22 present rebuttal evidence. Each witness is subject to
23 direct examination, cross examination and redirect
24 examination.

25 At the end of the case the attorneys will present

1 their closing arguments. The State is given the right to
2 argue first and last because the State has the burden of
3 proof.

4 After all the evidence has been presented, I will
5 read the final instructions which contain the rules of law
6 that you must follow in deciding the case.

7 You will deliberate in the jury room. Once you
8 agree on a verdict, you will be brought into the courtroom
9 where the clerk will read the verdict in the presence of
10 the parties.

11 You have two major duties as jurors. To
12 determine the facts and to attempt to reach a verdict by
13 applying the law to the facts. You must decide the facts
14 only from the evidence produced in Court. You must not
15 speculate or guess about any fact and you must not be
16 influenced by sympathy or prejudice.

17 You will hear the evidence, decide the facts and
18 then apply those facts to the law that I will give you.
19 That is how you will reach your verdict. In doing so you
20 must follow the law whether you agree with it or not. You
21 must not take anything I might say or do during trial as
22 an indication of any opinion I may have about the facts.
23 You and you alone are the triers of the facts.

24 Finally you are not to consider the possible
25 punishment that could be imposed.

1 You must determine the facts from the evidence
2 produced in Court. Evidence includes the testimony of
3 witnesses, exhibits offered and admitted by the Court and
4 fact stipulations, that is, agreements between the
5 parties.

6 Evidence does not include the lawyers'
7 statements. The statements and arguments of the attorneys
8 may help you understand the law and the evidence but they
9 are not evidence in and of themselves.

10 If I sustain a lawyer's objection to a question,
11 you must disregard the question and not guess what the
12 answer to it might have been.

13 If I order certain testimony stricken from the
14 record, you should disregard that testimony.

15 A lawyer's question is not by itself evidence.

16 If I do not allow a particular exhibit to be
17 received as evidence, that exhibit is not evidence for you
18 to consider. Do not concern yourself with the reasons for
19 my rulings on the admission of evidence. Do not regard
20 those rulings as any indication from me as to the
21 credibility or weight that you should give to any evidence
22 that has been admitted. It is up to you to decide what
23 testimony to believe and how much weight to give it.

24 In determining the credibility of witnesses, you
25 should use the test for accuracy and truthfulness that

1 people use in determining matters of importance in every
2 day life, including such things as their ability and
3 opportunity to observe; their memory; their manner while
4 testifying; any motive or prejudice they might have; any
5 inconsistent statements they may have made. You should
6 evaluate the testimony in light of your common sense and
7 experience.

8 The rules of evidence ordinarily do not permit
9 the opinion of a witness to be received as evidence.
10 However, a witness may give an opinion on a subject upon
11 which a witness has become an expert because of education
12 and/or experience. Expert testimony should be used by you
13 like the testimony of any other witness. You are not
14 bound by it. You may accept it or reject it in whole or
15 in part and you should give it as much weight as you think
16 it deserves considering the witness's qualifications and
17 experience, the reasons given for the opinions and all the
18 other evidence in the case.

19 The jurors are not permitted to ask questions
20 directly of witnesses. The examination of witnesses is
21 left to the attorneys. However, during the examination of
22 witnesses, you may wonder why certain questions are not
23 asked by the attorneys. In the event you do have an
24 important question that you think should be asked, write
25 it down on the question forms provided in your juror

1 notebook. After the attorneys have finished questioning a
2 witness, I will ask if you have a question. If you do,
3 raise your hand, your question form will be collected by
4 the bailiff who will bring it to me. The question must be
5 in writing or it cannot be considered.

6 The question will be reviewed with the attorneys
7 and if I decide that the question is a proper one, it will
8 be asked. Keep in mind, however, that the rules of
9 evidence or other rules of law may prevent some questions
10 from being asked. I will apply the same standards to your
11 questions as I do to the questions asked by the attorneys.

12 Do not be discouraged if a question you submit is
13 not asked. Do not speculate as to why it was not. The
14 fact that a juror's question is not asked does not
15 indicate the question was not a good one or it should not
16 have been submitted. It merely means for some legal
17 reason it could not be asked.

18 During the course of the trial, recess or break
19 periods may be longer than anticipated or announced by the
20 Court. The delays are necessitated by either matters
21 related to this trial or to the Court's obligations to
22 manage other cases pending before the Court. I apologize
23 in advance for any inconvenience this may cause and hope
24 that you understand these delays are simply unavoidable.

25 The law provides for a jury of eight persons in a

1 case like this. In any case lasting several days we seat
2 one or more alternate jurors so that if a juror becomes
3 ill or has a personal emergency, the trial can continue
4 without that juror. In this case one alternate will be
5 chosen randomly by the clerk at the end of the case.
6 Until then each of you must consider yourselves a juror in
7 this case. Please do not be concerned with who may or may
8 not be an alternate.

9 The law does not require a defendant to prove his
10 innocence or to present any evidence at all. A defendant
11 is presumed by law to be innocent. The State must prove
12 the defendant guilty beyond a reasonable doubt. This
13 means the State must prove each element of the charge
14 beyond a reasonable doubt.

15 This burden never shifts throughout the trial.
16 If the State does not meet this burden of proof, you must
17 find the defendant not guilty.

18 If at any time during the trial you have
19 difficulty hearing or seeing something that you should be
20 hearing or seeing, or if you have personal distress for
21 any reason, please raise your hand and let me know.

22 It may seem that we are taking your presence for
23 granted, but I assure you that we are not. We are very
24 mindful of the voluntary nature of your service and we
25 will make every effort to use your time efficiently and to

1 make you as comfortable as possible during your service.

2 We have provided carafes of water and cups. If
3 you want some water, simply pour yourself a cup or ask
4 another juror to pass it to you. You do not need to ask
5 permission to do this. If you wish to bring in your own
6 container of water tomorrow, you may. However, please do
7 not bring any other beverage into the courtroom.

8 Ladies and Gentlemen, that concludes the general
9 preliminary instructions. I will now read the charges and
10 the instructions that apply specifically to these charges.

11 The defendant is charged as follows: that on or
12 about the 27th of September, 2008, Jeffrey Allen Wood
13 assaulted Bradley Schwartz causing temporary but
14 substantial disfigurement, temporary but substantial loss
15 or impairment of any body organ or part, or a fracture of
16 any body part.

17 The State has charged the defendant with the
18 crime of aggravated assault. The defendant is presumed
19 innocent, you must not think the defendant is guilty just
20 because of this charge.

21 The defendant has pled not guilty. This plea of
22 not guilty means that the State must prove every part of
23 the charge beyond a reasonable doubt.

24 The crime of aggravated assault requires proof
25 that the defendant committed assault, which requires proof

1 that the defendant intentionally, knowingly or recklessly
2 caused a physical injury to another person; and the
3 assault was aggravated by the fact that the defendant
4 committed the assault by any means of force that caused
5 temporary but substantial disfigurement, temporary but
6 substantial loss or impairment of any body organ or part
7 or a fracture of any body part.

8 Intent or intentionally as used in these
9 instructions means that a defendant's objective is to
10 cause that result or to engage in that conduct.

11 Intent may be inferred from all the facts and
12 circumstances disclosed by the evidence. It need not be
13 established exclusively by direct sensory proof.

14 The existence of intent is one of the questions
15 of fact for your determination.

16 And that concludes the preliminary instructions.
17 And the State may present opening statement when you are
18 ready, Mr. Diebolt.

19 MR. DIEBOLT: Thank you, Your Honor. I am just
20 going to take a few minutes to talk to you about the case.
21 It is a very simple case, there is nothing overly
22 complicated about it and therefore it will probably be
23 short in duration and we will probably finish by tomorrow.
24 It is 2:00 o'clock, we will have some witnesses this
25 afternoon. The very first witness you will hear from will

1 be Brad Schwartz. Brad Schwartz is an inmate in the
2 Department of Corrections. So is the defendant, Mr. Wood.

3 MR. KLEIN: Judge, I am going to object. Can we
4 approach?

5 THE COURT: Yes.

6

7 ((Whereupon there is an on-the-record bench
8 conference.))

9

10 MR. KLEIN: I believe the record will reflect
11 that Mr. Diebolt said Brad Schwartz is an inmate in the
12 Department of Corrections, so is Mr. Wood. That's
13 improper to say that he is currently in the Department of
14 Corrections.

15 THE COURT: Why?

16 MR. KLEIN: Why? It is totally irrelevant as to
17 whether he is currently in the Department of Corrections.

18 THE COURT: Mr. Klein, the evidence surely will
19 show or indicate it was the case that they were both in
20 prison at the time of this offense.

21 MR. KLEIN: That's true, back in September of
22 2008. There's no basis and no reason for him to say that
23 Mr. Wood is still in the Department of Corrections.

24 THE COURT: All right. Noted. No further
25 reference to the current status of either gentleman is to

1 made during the trial.

2

3 ((End of bench conference.))

4

5 MR. DIEBOLT: Both Mr. Wood and Mr. Schwartz were
6 housed at a unit called the Rincon unit, which is a
7 division of the Arizona Department of Corrections, it
8 happens to be in Tucson. There are different divisions
9 all throughout the State. Parts of the State.

10 Being housed in the Department of Corrections
11 that particular unit allows inmates to access classes if
12 they so choose. There is a particular class, it happened
13 to be a creative writing class, it doesn't really matter,
14 where a volunteer comes in and teaches, teaches a class to
15 inmates. It is an opportunity for inmates to attend this
16 class.

17 Mr. Schwartz was intending the class. In the
18 classroom setting which is inside the prison in 2008 the
19 inmates have access to leave and go to the inmate bathroom
20 or leave and go to get a drink from the drinking fountain
21 which is right adjacent to the classroom.

22 There are several inmates in the room,
23 Mr. Schwartz leaves to go to the bathroom, on the way back
24 from the bathroom, which is all pretty close in area, he
25 gets a drink from the drinking fountain. At the drinking

1 fountain he is confronted by the defendant.

2 And I don't know how other to put it. There are
3 two ways to put it. Mr. Wood assaulted him and Mr. Wood
4 kicked his butt. I hope that doesn't offend anyone, but
5 he basically pummeled him to the point that he caused
6 fractures to Brad Schwartz's face, eyes and nose and
7 extensive bleeding. He was immediately taken to Saint
8 Mary's Hospital. After Saint Mary's Hospital he was
9 transported to Maricopa County Medical Center via
10 helicopter to undergo surgery and repair for the injuries
11 he suffered.

12 At the time Mr. Schwartz was assaulted, he tells
13 one of the corrections officers it was Wood or Woods.
14 He's got tattoos all over him. He's got a shaved head.
15 And then eventually Ian Friedlander who is an investigator
16 with the Department of Corrections, he shows a six pack, a
17 six photo array to Brad Schwartz and Mr. Schwartz says,
18 that's the guy that did it.

19 As soon as this happens, this incident happens,
20 corrections officers came. You will hear from two or
21 three corrections officers who were working at the prison
22 at the time. And you will hear specifically as to what
23 the defendant told them. And the first one was Officer
24 Fairchild and she will tell you that the defendant
25 Mr. Wood says, I was the only one involved in the

1 incident.

2 Mr. Wood, the inmate, was then later interviewed
3 if you will by the investigator, which is Friedlander, and
4 he made statements to Friedlander about his participation
5 in the assault.

6 There's a few things to remember. I asked you a
7 brief question earlier about if any one of you felt that
8 because you are in the Department of Corrections, housed
9 there, that you don't have a right to, well, that all your
10 rights are removed. And if any one of you believed that.
11 And no one raised their hand. And the reason that we are
12 here is because one inmate assaulted another inmate and
13 caused temporary but substantial injury, that is how the
14 law reads, temporary but substantial, by the damage he
15 did.

16 And there's consequences for that. And that's
17 why we are here. In addition to, well, what you do is you
18 listen to testimony, that's basically what your
19 responsibility is. You decide what the facts of the case
20 are. And how you do that is you bring in your common
21 sense, your life experiences, you listen to the people who
22 testify under oath on the stand and you ask yourself a
23 question. The question is, am I firmly convinced that the
24 defendant is guilty of committing assault?

25 And I would submit to you that at the conclusion

1 of this case you will be firmly convinced. There are no
2 cuts, no injuries, no bleeding from the defendant
3 whatsoever at the conclusion of the incident.

4 And the defendant -- I am going to sit down
5 because I want to get to Brad Schwartz, I want to put him
6 on the stand and get him sworn in and have him tell you
7 what happened. I would ask you to listen carefully, take
8 notes either mentally or on paper, confer with each other
9 at the conclusion of this fairly short presentation of
10 evidence, and I will be asking you to come back with a
11 guilty verdict. Thank you.

12 THE COURT: Mr. Klein, do you wish to make an
13 opening at this time?

14 MR. KLEIN: Ms. Bensley will, Your Honor.

15 THE COURT: Ms. Bensley, you may proceed.

16 MS. BENSLEY: This case is really about a man who
17 was convicted of a crime and wasn't happy about that
18 conviction. That man is Bradley Schwartz. He was so
19 unhappy about that conviction that he wanted the State to
20 pay for it. So much so that he sued the State of Arizona
21 in a civil lawsuit in an attempt to manipulate the system.

22 Now let me be very clear, we are not here because
23 of the civil lawsuit. But that civil lawsuit is important
24 because Mr. Schwartz was sent to prison and he needed a
25 basis to sue the State. Mr. Schwartz was in other fights

1 while he was in prison. And you are going to hear
2 testimony about that from various witnesses. Weeks and
3 even months pass after those fights and no lawsuit was
4 ever filed. In those other fights Mr. Schwartz did not
5 sustain serious injuries. Those injuries were not severe
6 enough to warrant the filing of a lawsuit. Mr. Schwartz
7 needed more to manipulate the system.

8 You will also hear testimony that Mr. Schwartz
9 did not want to enter into protective custody, or PC as it
10 is often referred to. Witnesses from the state prison,
11 from the Department of Corrections will testify that the
12 prison is set up in a way that it can offer protection for
13 inmates that either fear for their safety or are in
14 jeopardy. An inmate can ask to enter into protective
15 custody or the prison can place him into it involuntarily.
16 Mr. Schwartz had been beaten up before, he had been
17 offered that protective custody and he refused to enter
18 into it. Even signing a statement saying so.

19 When all of the circumstances are taken together,
20 we are going to ask you to find that Mr. Schwartz
21 instigated a fight with Mr. Wood to form the basis for his
22 lawsuit. Mr. Wood then acted in self defense in response
23 to this instigation by Mr. Schwartz.

24 Mr. Schwartz isn't going to admit that he
25 instigated the fight. And he's not going to admit that

1 Mr. Wood was defending himself. Although Mr. Schwartz
2 won't admit it, there will still be circumstantial
3 evidence to support this was self defense.

4 Now there will also be no evidence that Mr. Wood
5 received any injuries during this incident. But the law
6 does not require that somebody receive injuries before
7 they can act in self defense.

8 After the fight Mr. Schwartz took steps to
9 exaggerate the incident. He overstated how the fight
10 occurred and tried to make it involve more than just his
11 bare hands. Witnesses will testify that no weapons of any
12 type were found by any of the prison guards.

13 He also did everything he could to aggravate the
14 injuries he did sustain so they would look more serious.

15 After the guards became aware of the incident,
16 Mr. Schwartz was taken to the medical unit. Nurse
17 Quattlebaum who is a nurse for the prison, for the
18 Department of Corrections, she treated Mr. Schwartz in
19 that medical unit. Ms. Quattlebaum will testify that Mr.
20 Schwartz's actions after the injury included blowing his
21 nose. Mr. Schwartz knew that if he had an injury around
22 his eye area, that he should not blow his nose.
23 Mr. Schwartz will admit that when he was a doctor he would
24 tell his patients not to blow their nose when they had
25 this type of possible injury.

1 The nurse had even already instructed him not to
2 do that.

3 Because he was previously a doctor, he knew that
4 blowing his nose would cause his eyes to actually
5 protrude, making the injury look worse. Knowing all that,
6 he did it any ways. The nurse even had to warn him again
7 not to do it.

8 Finally he was very vocal about how he was being
9 treated medically in order to manipulate the system
10 involving his medical care, all of it for the benefit of
11 his lawsuit.

12 As the jury you can make assessments about the
13 credibility of witnesses. As part of your assessment of
14 the credibility of Bradley Schwartz you will hear that Mr.
15 Schwartz has one felony conviction and that he also pled
16 guilty in a separate case involving a charge of conspiracy
17 to obtain a controlled substance by fraud or deception.

18 Mr. Schwartz got what he wanted and even more.
19 He tried to manipulate the medical system and the legal
20 system. As the jury don't let him manipulate this
21 criminal trial.

22 THE COURT: The State may call its first witness.

23 MR. DIEBOLT: The State will call Bradley
24 Schwartz.

25 THE COURT: We will need time?

1 MR. DI EBOLT: Just a few minutes.

2 THE COURT: Ladies and Gentlemen, the bailiff
3 will escort you to the jury room for a few moments until
4 we get the witness into the courtroom.

5 MR. DI EBOLT: Judge, may I address the Court.

6 THE COURT: Let the record reflect the absence of
7 the jury, the presence of counsel and the defendant.

8 MR. DI EBOLT: It is my understanding Mr. Schwartz
9 is in chains and I talked to the corrections officers, or
10 the officer, excuse me, and they don't have a problem
11 removing it but they would need the Court's okay for that.

12 THE COURT: That's fine.

13 Mr. Klein, I take it from the record so far what
14 you want a self defense instruction?

15 MR. KLEIN: Yes, actually, Judge, I can give you
16 those jury instructions.

17 THE COURT: I appreciate as much advance notice
18 as I can get.

19 You may bring in the jury.

20 THE BAILIFF: The jury is entering.

21 THE COURT: Please be seated. The record will
22 show the presence of the jury, counsel and the defendant.

23 And the State may call its witness.

24 MR. DI EBOLT: The State calls Brad Schwartz.

25 THE COURT: Mr. Schwartz, if you would face the

1 clerk and raise your right hand to be sworn.

2

3 BRADLEY SCHWARTZ

4 having been duly sworn, takes the witness stand and
5 testifies as follows.

6

7 DIRECT EXAMINATION

8 MR. DIBOLT:

9

10 Q. Would you please introduce yourself to the jury.

11 A. My name is Bradley Allen Schwartz.

12 Q. Mr. Schwartz, do you have a background and
13 training and education and experience as a doctor in
14 Tucson?

15 A. Yes, I do.

16 Q. How long were you practicing, approximately?

17 A. In Tucson?

18 Q. In Tucson?

19 A. From 1998 up until October, 2004.

20 Q. I want to ask you several questions about
21 September, 2008 and I want to go backwards from there.
22 Prior to September of 2008 had you been assaulted in the
23 Department of Corrections?

24 A. Prior to September? Yes.

25 Q. And on September 27th, 2008, you were in fact

1 housed in the Rincon Unit in the Department of
2 Corrections; is that also correct?

3 A. Yes, that's correct.

4 Q. On that particular day, which was September 27th,
5 2008, I want to talk about the incident and I want to talk
6 about surrounding factors. Right before the assault
7 occurred, what were you doing?

8 A. I was in a classroom, there was a class that was
9 offered called creative writing that was given by a
10 professor who had come from the University of Arizona,
11 Professor Shelton. And the class ran from I would say
12 about 12:00 o'clock to about 2:00 o'clock every Saturday.
13 So I was in the classroom attending that class.

14 Q. At some point during the class -- were there
15 other inmates in the class?

16 A. There were about maybe 15, I would say, 15 to 18
17 people that usually went. That Saturday there were a
18 couple people missing, so maybe 12, 13 people in the
19 class.

20 Q. And are inmates that are housed there allowed to
21 leave the classroom and use the facilities?

22 A. Yes.

23 Q. And did you in fact do that at some point during
24 the class?

25 A. Yes, with about 15 minutes remaining, maybe 20

1 minutes remaining in the class, I got up and stretched my
2 legs and went to the bathroom which was, the classroom was
3 situated down a long corridor and at one end of the
4 corridor it's locked but the other end where we came into
5 the corridor into the classroom is a sort of outdoor quad,
6 if you will. An open air quad. And there are offices off
7 of that quad. And the bathroom is off of that quad, so
8 it's outdoors. I walked down the hallway to stretch my
9 legs and I went to go to the bathroom so I am physically
10 outside the building, and then you step into the bathroom
11 at that time.

12 Q. So you used the restroom; is that correct?

13 A. Yes.

14 Q. What did you do after that?

15 A. I was just looking up at the sky, just enjoying
16 the day. It was a nice sunny day out and then I went back
17 down the corridor towards the classroom again toward the
18 water fountain.

19 Q. What happened at that point?

20 A. At that point Mr. Wood was at the water fountain.
21 I didn't really see what he was doing, I assumed he was
22 drinking or washing something off. And I just had my
23 hands in my pockets and was looking at the ground,
24 basically just waiting.

25 Q. Did you go up to the water fountain itself?

1 A. I didn't get there, I don't believe I even got a
2 chance to make it to the water fountain, I think I was
3 just standing with my back up against the wall looking at
4 the ground when things happened.

5 Q. Tell the jury about things happening?

6 A. Well, like I said I had my hands in my pocket, I
7 was looking at the ground, I really wasn't expecting
8 anything. And he wheeled around 180 degrees and struck me
9 in my face. And I think, what I remember is that I went
10 down immediately. And he just started pummeling me. And
11 at some point I believe I even said to him, all right,
12 already, you got me enough; enough already; and he just
13 kept going.

14 Q. Were you in a standing position, a kneeling
15 position?

16 A. No, I was down on the ground.

17 Q. And do you know if he was using his fists, his
18 hands, his feet or could you tell?

19 A. It was, from what I remember, it was maybe 99
20 percent his hands, maybe he kicked me once or twice.

21 Q. And when he kicked you were you on the ground?

22 A. I was on the ground.

23 Q. Do you remember, could you even estimate how many
24 times you were struck?

25 A. You know, when you are going through something

1 like that, it feels like interminable. I would say it was
2 maybe 20, 25 times.

3 Q. During that time do you remember saying anything
4 to him?

5 A. I said, you got me enough already. Stop.

6 Q. Let me stop you there and ask you, right before
7 he wheeled around and took a swing at your face and struck
8 your face, did you say anything to him?

9 A. I said absolutely nothing.

10 Q. Did you, I guess maybe in prison you can look at
11 people the wrong way, did you give him a dirty look?

12 A. No.

13 Q. Do you remember him saying anything to you?

14 A. No, he didn't say anything, he had his back to
15 me.

16 Q. And during the time he was striking you, do you
17 remember him saying anything to you?

18 A. I could have sworn I heard him a couple times
19 calling me a Jew, or dirty Jew, or something like that,
20 something of that nature.

21 Q. Are you of the Jewish faith?

22 A. Yes.

23 Q. At some point, obviously at some point this
24 incident stopped and he stopped hitting you or striking
25 you; is that correct?

1 A. Yes.

2 Q. What happened at that point?

3 A. He just calmly walked away. Walked back into the
4 classroom.

5 Q. Did he say anything then?

6 A. No, nothing at that point.

7 Q. Where were you when this pummeling was over?

8 A. I was on the floor and I just, I kind of inched
9 my way up on the wall to pick myself up. I found my eye
10 glasses which were kind of mangled at that point. I was a
11 little woozy as you can imagine and I was walking down the
12 hallway just kind of holding onto the wall as I was
13 walking. I was dripping blood and I walked toward the
14 open quadrangle there and there were officers milling
15 around because they were at the time of their shift change
16 so you had officers leaving and officers coming so you had
17 double the standard number of officers at that time at
18 around close to 2:00 o'clock. And the first one that saw
19 me was an Officer Powell.

20 MR. KLEIN: Judge, I am going to object to the
21 narrative.

22 THE COURT: Sustained.

23 MR. DIEBOLT:

24 Q. Was Officer Powell one of first officers you came
25 into contact with?

1 A. He was the first one.

2 Q. What happened with Powell?

3 A. Powell immediately called ICS which is, it is
4 some kind of emergency incident, I'm not sure what the
5 abbreviation stands for, and that's basically to lock down
6 the yard and to get officers to come assist him.

7 Q. Were you bleeding at that time?

8 A. Oh, I was bleeding all over the place.

9 Q. What was your, let me skip that. After Powell
10 calls ICS, what happens?

11 A. After Powell calls ICS, anyone that is on the
12 yard that's not on the rec field, which is a fenced-in
13 area where guys were at rec that morning, they were
14 already enclosed, they don't need to be locked down, but
15 guys that are walking around on the rest of the yard, they
16 are told to lock down immediately. Officers come to
17 assist whoever the officer is who is calling the ICS. And
18 that's basically it.

19 Q. Did you go back in the classroom yourself?

20 A. No, I didn't. At some point I remember that one
21 officer accompanied all the people --

22 MR. KLEIN: Judge, objection to the narrative
23 again.

24 THE COURT: Overruled at this point, you may
25 continue.

1 THE WITNESS: At some point I remember an officer
2 going into the classroom and, well, let me take a step
3 back. First they wanted to find out who did this to me
4 but afterward I remember them taking all the people out of
5 the classroom and accompanying them back to their cells.

6 MR. DIEBOLT:

7 Q. Did you know the person that did this to you?

8 A. Meaning know who did it or know him personally?

9 Q. That's a good question. Did you ever know him
10 personally prior to this incident?

11 A. No, maybe I said two words to him before, ever.

12 Q. Had you seen him before?

13 A. Yeah, I had seen him in the classroom.

14 Q. Had you ever had any problems with him?

15 A. No, absolutely not.

16 Q. Did you attempt to tell the officers who had done
17 this to you?

18 A. Yeah, I did.

19 Q. Did you describe him to the officers?

20 A. Before I even said anything, they said --

21 MR. KLEIN: Judge, I am going to object to what
22 the officers said as hearsay, and non-responsive as well.

23 THE COURT: Overruled. Not for the truth of the
24 matter.

25 THE WITNESS: The officer said to me, oh, he

1 admitted it. It is that guy Wood.

2 MR. KLEIN: Judge, I would ask you to strike that
3 based on the answer.

4 THE COURT: The jury will disregard that
5 response, it is stricken.

6 THE WITNESS: I didn't even know his name, to
7 tell you the truth. I amte who he was, I could describe
8 what he looked like but I didn't know his name, I couldn't
9 have said, oh, yeah, it was Wood, I didn't know his name.

10 MR. DIEBOLT:

11 Q. Did you describe him to the officers?

12 A. Yes.

13 MR. DIEBOLT: If I may approach the witness with
14 some photographs.

15 THE COURT: You may.

16 MR. DIEBOLT:

17 Q. I want to show you a series of photographs. I
18 will give you a number and see if you recognize them.
19 They are in no particular order. I am just going to stand
20 beside you. State's two, do you recognize that?

21 A. Yeah, that's me.

22 Q. Is that a picture of you after this incident?

23 A. Yeah, I believe so.

24 Q. Do you recognize State's three?

25 A. Yes, it is the hallway.

1 Q. Is that the hallway where the assault took place?

2 A. Yeah. I'm trying to see where the water fountain
3 would be. Right here to the left in the picture.

4 Q. And that's on State's three. State's four, do
5 you recognize that?

6 A. Yeah, that's where I was taking myself along the
7 wall to get back. There's the water fountain again in the
8 next one.

9 Q. You are pointing to State's five; is that
10 correct?

11 A. Yes.

12 Q. There seems to be some, well, blood on the floor?

13 A. Yeah.

14 Q. State's six, do you recognize that?

15 A. That's probably mine. Probably 0 negative.

16 Q. State's seven, do you recognize that, is that
17 you?

18 A. Yeah.

19 Q. State's eight?

20 A. Yeah, that's me.

21 Q. State's nine, is that also you?

22 A. Yeah.

23 Q. Those were all taken right after the incident
24 occurs; is that correct?

25 A. Yes.

1 Q. State's 10?

2 A. Yes, that's me.

3 Q. What is depicted in State's 10; can you see that
4 okay?

5 A. Yes, that's blood along the mat exiting the door
6 there. I didn't think I bled that much.

7 Q. It is kind of a back shot but do you recognize
8 who is depicted in State's one?

9 A. Yeah. That is Mr. Wood. That is Officer Powell
10 right there.

11 MR. DIEBOLT: I move for the admission of those
12 items at this time.

13 THE COURT: Any objection?

14 MR. KLEIN: No.

15 THE COURT: Exhibits one, two, three, four, five,
16 six, seven, eight, nine and ten are admitted.

17 MR. DIEBOLT:

18 Q. I want to talk a little bit about the injuries
19 that you received from this assault. Can you tell the
20 jury where you were struck and what was the injury that
21 resulted from those strikes?

22 A. Okay. All of the blows basically were around my
23 eyes. My mid face. I sustained what's known as a frontal
24 ethmoidal nasal fracture which is a fracture through the
25 bridge of the nose and it extends behind the bridge of the

1 nose into what is called the ethmoidal air spaces and it
2 also involved the floor of the eye sockets and the roof of
3 my eye sockets.

4 And in essence it had the effect of basically
5 collapsing, if you think of it like a book, you would be
6 closing the cover of a book by pushing in by the bridge of
7 my nose where the binding of the book would be by my
8 mouth, if you will. If that makes sense. Closing the
9 book like this, okay. So the cover would be my face. If
10 that makes sense. So that part of my face was in essence
11 collapsed, all those bones right in that area were broken.

12 Do you want me to talk about the other injuries?

13 Q. Let's just talk about all of them right now, then
14 I will ask you some follow-up questions.

15 A. Okay. So as a result of that, the nerve that
16 brings the sense of smell was severed so I no longer have
17 smell. In turn because of that, it is linked with the
18 nerve that allows you to taste, so I don't have taste at
19 all, taste or smell. And that's permanent.

20 I had some mild damage to my right optic nerve so
21 my color vision is off in my right eye. And in addition,
22 because of the close proximity of everything within the
23 eye socket, the muscles that move the eye were affected
24 and my right eye is turned outward a little bit, that's
25 called strabismus when your eyes are misaligned, and

1 because of that I have permanent double vision and I have
2 to wear, I have something ground into glasses called
3 prisms to correct that.

4 And let's see. I guess because of the damage to
5 the optic nerve, the damage to the olfactory nerve which
6 is the nerve that lets you smell, in essence you could,
7 one could then conclude that I have what is called a
8 traumatic brain injury.

9 Q. What treatment did you receive medically? Did
10 you first go to the Department of Corrections treatment
11 facility, then somewhere from there?

12 A. I was first taken to the DOC little infirmary
13 area on the unit. And they were waiting for an ambulance
14 to take me to the hospital and I was driven to Saint
15 Mary's Hospital, I believe. And then from there they flew
16 me via helicopter to Maricopa Medical Center up in the
17 Phoenix area,

18 MR. DIEBOLT: May I approach the witness, Your
19 Honor?

20 THE COURT: Yes.

21 MR. DIEBOLT: If I may approach.

22 THE COURT: Yes.

23 MR. DIEBOLT:

24 Q. I am going to show you three documents, 11, 12
25 and 13, or sets of documents. Disregarding the first

1 page. Let me go backwards. Do you recognize what these
2 documents are, starting with 13? Do you see --

3 A. Yes, this is I guess, it must be medical records,
4 it must be from Saint Mary's. Yes. Yes, this is the,
5 when you get seen in the E. R. by a physician, they
6 dictate a note. That's probably what this is. They
7 didn't really treat me there, other than stabilize me.

8 Q. Do you see State's 11?

9 A. Maricopa Integrated Health System, yes, this is
10 when I hit the E. R. at Maricopa Medical Center.

11 Q. Again does that look like a copy of the medical
12 records from that particular medical facility?

13 A. Yes.

14 Q. And what clinic was that?

15 A. Neuro-surgery clinic. Actually this one right
16 here, this is at the clinic, this is not an E. R. visit, I
17 don't think, this is from when I saw the, this is
18 follow-up, this is follow up when I had my surgery on my
19 neck later on.

20 Q. And as a result of this particular assault, had
21 you had, did you get follow-up medical treatment in
22 addition to the initial treatment that you received, was
23 there follow-up?

24 A. Yeah, I had had prior problems with my neck. I
25 had had several slipped discs in my neck, several which I

1 had operated on prior to my arrest. And as a result of
2 the assault, the problem was exacerbated so I had another
3 surgery on my neck about five, six months after.

4 Q. Do you remember having an opportunity to talk to
5 Investigator Friedlander about what had happened on that
6 day, September 27th, 2008?

7 A. Yes.

8 Q. Do you remember being shown a six photo array and
9 asked to see if you could identify the individual who had
10 assaulted you?

11 A. Yes, I do.

12 Q. Do you remember picking a person out of that six?

13 A. Yes, I do.

14 Q. At some point after this assault -- let me back
15 up. Had there been assaults on you prior to this
16 particular incident?

17 A. Yes, there were several others.

18 Q. And was the Department of Corrections aware of
19 some of those?

20 A. Absolutely.

21 Q. Were you ever asked to be or were you ever asked
22 if you wanted to be in protective custody for your safety?

23 A. I had talked about it with an Officer Haus
24 several times and suggested it and she said, no, you were
25 not ready yet. Whatever that meant.

1 Q. Did you ever talk to anyone else or have any
2 consultation with anyone else in the Department of
3 Corrections as to protective custody?

4 A. I didn't get into the specifics. I had kind of
5 touched upon it a little bit with Deputy Warden Schaff.

6 Q. What happened with that?

7 A. Well, it was after that guy Pritchard jumped on
8 me in the chow hall, he had us both in the office talking
9 to us.

10 Q. Let me stop you there. Is Pritchard a guy who
11 from a previous incident had done something?

12 A. Yes.

13 Q. Had he assaulted you?

14 A. Yes.

15 Q. Had that been reported?

16 A. Yes.

17 Q. And had the deputy warden brought you and
18 Pritchard into somewhere together?

19 A. Correct.

20 Q. After the incident?

21 A. Yes.

22 Q. What happened there?

23 A. Well, he had us both together in the room and he
24 was chastising Pritchard about what happened and basically
25 saying, you know, that here it was that, you know,

1 Schwartz didn't do anything to you, didn't even look at
2 you and you jumped on him, what was going on?

3 He basically questioned him and then he said to
4 me, Schwartz, look, my hands are kind of tied with this
5 guy right now. If we move him, the place that he's going
6 to go to, his safety is, his safety will be at risk. So I
7 am kind of looking for your permission, this is me sort of
8 paraphrasing what he is saying, I'm sort of looking for
9 your permission to let him stay here. What do you say?

10 Now what was I going to say? No, throw him in
11 the hole. No, I am not going to say that. So I said, I
12 have no problem with the guy as long as he leaves me
13 alone, I guess that's all right.

14 But so then he made me sign a piece of paper
15 saying that I felt safe being there, even though I didn't
16 feel safe being there. And I had touched upon possibly
17 leaving the unit. He kind of put a gun to my head.

18 Q. Not literally?

19 A. Not literally but figuratively by making me sign
20 this piece of paper saying that it was okay that this guy
21 remain on the yard and that I could stay on the yard.

22 Q. Well, I guess from the little that I am about
23 prison life, is there, there seems to be somewhat of a
24 code, I don't want to use the word ethics but a code in
25 prison; is that something that is Fairchild to say?

1 A. Well, there's all sorts of different codes, which
2 code are you talking about?

3 Q. I guess not to snitch on people, have you ever
4 heard of that?

5 A. Yes.

6 Q. At some point did you make a decision to go ahead
7 with a lawsuit against the Department of Corrections?

8 A. Yes, I did.

9 Q. And do you remember when that was that in
10 reference to the timing of these assaults? Was it after
11 this assault that we're talking about on September 27th,
12 2008?

13 A. Well, it was way after with this gentleman, it
14 was months after.

15 Q. And was the reason for the lawsuit, was it
16 because you had been assaulted so many times?

17 A. It was just because of DOC's incompetence in
18 controlling the situation. They knew what was going on
19 and they turned the other cheek and it happens there
20 constantly like that.

21 Q. Now before you were in the Dependent of
22 Corrections did you ever, did you have a prescription drug
23 habit?

24 A. Well, what happened, like I said I have a
25 congenital, I have a neck problem, it is called congenital

1 spinal stenosis or congenital narrowing of the canal that
2 my spinal cord passes through in my neck. And around, I
3 would say 2000, either 2000 or 2001, somewhere around that
4 time I started developing symptoms where I would get this
5 electrical shock symptoms down my arms into my hands if I
6 turned my neck a certain way.

7 And I started getting that associated pain. And
8 first I ignored it, I didn't do anything about it. And
9 then it progressively got worse, and here I am seeing 40,
10 50 patients a day and I am busy, I have my own family at
11 home and I can't get out of the office, I'm constantly
12 tied up, and I was dumb. I ignored it and for lack of a
13 better reason I was just lazy and I should have gone to
14 see a doctor, being one myself, I should have realized
15 that there was something wrong.

16 But I didn't, and what I did was I said, okay, I
17 am having pain so I get pain pills. So I wrote my office
18 manager a script for pain pills and she filled it for me
19 and got them for me. And every couple of months, every
20 month she would do it for me when I needed it.

21 Q. And that's not permissible, correct?

22 A. No, I should have done the right thing and gone
23 to a doctor. As it turned out, I had a problem.

24 Q. Do you see inmate Wood in the courtroom today?

25 A. Yes.

1 Q. Where is he sitting and what he is wearing?
2 A. Blue shirt, blue tie. In the middle of his
3 attorneys.

4 MR. DIEBOLT: May the record reflect the witness
5 has identified the defendant in this case.

6 THE COURT: The record will reflect the witness
7 has indicated the defendant.

8 MR. DIEBOLT:

9 Q. Did you ever during or back to the incident on
10 September 27th, 2008, in the hallway by the drinking
11 fountain within Wood, did you ever strike him?

12 A. No.

13 Q. Did you ever raise your hand or try to strike
14 him?

15 A. No.

16 Q. Did you ever fight back yourself?

17 A. No.

18 Q. Why not?

19 A. Well, I guess two reasons. One is the easy one
20 and one is the difficult one. The easy one is that
21 frankly I find violence disgusting. I find it abhorrent.
22 Being a physician I have taken care of many people with
23 the same problem I have had, as a matter of fact I was the
24 contract physician for DOC for about four years. For over
25 four years that I was in Tucson I had the contract to

1 repair these kinds of injuries for everybody south of
2 Florence in DOC, both for the inmates and for the guards.

3 Q. Did you ever have the opportunity to strike back
4 or hit Mr. Wood while he was assaulting you?

5 A. Pretty much I didn't even really have the
6 opportunity but the thought had crossed my mind and I
7 didn't. And you know the other more difficult answer is
8 that -- well, I will just leave it at that.

9 Q. Okay. Do you think, were there inmates as far as
10 you knew that were aware that you had been a practicing
11 doctor on the outside?

12 MR. KLEIN: Judge, I am going to object to what
13 other inmates may have known.

14 THE COURT: Sustained.

15 THE WITNESS: Don't answer that?

16 THE COURT: Don't answer it, right.

17 MR. DIEBOLT:

18 Q. Do you believe that any of the assaults stem from
19 the fact that you had been a doctor on the outside?

20 MR. KLEIN: Objection, still speculation.

21 THE COURT: Sustained.

22 MR. DIEBOLT:

23 Q. Were any inmates aware that you were a doctor?

24 MR. KLEIN: Judge, same objection. All he's
25 done is change other inmates to any.

1 THE COURT: Yes, there would have to be some
2 objective basis for that kind of question. There's not
3 such a basis at this point.

4 MR. DIEBOLT:

5 Q. Did any inmates ever refer to you as doctor or
6 ask if you had been a doctor on the outside?

7 A. Oh, yeah, my --

8 MR. KLEIN: Objection, excuse me, I have the same
9 objection to what other inmates may have done.

10 THE COURT: Overruled, he may respond to that
11 one.

12 THE WITNESS: Respond?

13 THE COURT: Yes.

14 THE WITNESS: Yes, that is my nickname, they call
15 me Doc. So they all know. I mean, given the fact that my
16 case took place in Tucson and this unit is in Tucson,
17 everyone knew what I was in there for.

18 MR. KLEIN: I am going to object to the
19 speculation that everyone knew.

20 THE COURT: Sustained. The jury will disregard
21 that last comment.

22 MR. DIEBOLT:

23 Q. Did you ever receive, did inmates ever try to
24 attempt to extort you for some money?

25 A. Yes.

1 MR. KLEIN: Judge, excuse me, I am going to
2 object again and ask that the answer be stricken unless we
3 can direct it specifically to Mr. Wood. What other
4 inmates may have done has no relevance.

5 THE COURT: Sustained. It is also leading.

6 MR. DIEBOLT:

7 Q. Could I have just one moment, Your Honor?

8 THE COURT: Yes.

9 MR. Diebolt: That's all the questions I have at
10 this point.

11 THE COURT: Mr. Klein.

12 MR. KLEIN: Before we start, may we approach for
13 a moment?

14

15 ((Whereupon there is an on-the-record bench
16 conference.))

17

18 MR. KLEIN: Based on Mr. Diebolt's question of
19 Mr. Schwartz and his answer that he abhors violence, I
20 would ask to be allowed to impeach him as to the nature of
21 his prior conviction.

22 THE COURT: No, I think that is a collateral
23 matter, I will not allow that.

24

25 ((End of bench conference.))

1

2 THE COURT: The Court's previous ruling, also
3 based on Rule 403.

4

5 CROSS EXAMINATION

6 MR. KLEIN:

7

8 Q. Mr. Schwartz, I think you testified that your
9 decision to go ahead with the lawsuit was made months
10 after you were hit on September 27th; is that your
11 testimony?

12 A. Yes.

13 Q. When you went to the infirmary at the Department
14 of Corrections, you met with a nurse by the name of
15 Quattlebaum, didn't you?

16 A. Yes.

17 Q. And isn't it true that one of the first things
18 you told her to do was get in touch with your lawyer?

19 A. Yes.

20 Q. Now in addition when you met with Ms.
21 Quattlebaum, she was treating you for your injuries,
22 right?

23 A. Right.

24 Q. And you yourself knew that if you had a
25 fractured, what is it called?

1 A. Orbit.

2 Q. Orbit, you shouldn't blow your nose, right?

3 A. Right.

4 Q. Did you blow your nose?

5 A. Yes, I wanted to see if it was fractured.

6 Q. In fact did Nurse Quattlebaum tell you not to
7 blow your nose?

8 A. Well, I didn't need her to tell me not to, I knew
9 that, I treat these things.

10 Q. Whether you knew that or not, didn't she tell you
11 not to blow your nose?

12 A. Yes.

13 Q. By blowing your nose, you wound up making your
14 eye protrude because of the fracture?

15 A. She told me not to blow it after I had done it.

16 Q. My question though was by blowing your nose you
17 made your eye protrude because of the fracture?

18 A. It didn't make it protrude, I felt the pressure
19 in there, it didn't make it protrude.

20 Q. Well, isn't it true that you used to tell your
21 patients not to blow their nose when there is a fracture?

22 A. Correct.

23 Q. And one of the reasons is because it makes your
24 eye protrude?

25 A. It could make your eye protrude.

1 Q. And you are saying that it didn't make your eye
2 protrude this time with Nurse Quattlebaum?

3 A. No, at least from what I recall.

4 Q. Okay. And your memory of the incident basically
5 is that you say Mr. Wood was standing at the water
6 fountain, correct?

7 A. Yes.

8 Q. You were standing across the hallway against the
9 wall, correct?

10 A. Yes.

11 Q. And without any provocation he just wheel ed
12 around and swung and hit you?

13 A. Yes.

14 Q. And I think, well, that distance was about eight
15 to ten feet away, wasn't it?

16 A. Yes.

17 Q. And he didn't advance toward you, did he?

18 A. Eight to ten feet? No, it was maybe five, six
19 feet, seven feet maybe, not ten feet.

20 Q. Do you remember talking with me and Ms. Bensley
21 and Mr. Diebolt was there, one of your lawyers was
22 present?

23 A. Yes.

24 Q. And do you remember we had this conversation in
25 one of the rooms in the courthouse, right?

1 A. Yes.

2 Q. You knew that it was being tape recorded?

3 A. Yeah.

4 Q. Have you been provided with a transcript of that
5 interview?

6 A. No.

7 Q. Let me show you what has been marked for
8 identification as defendant's P. If you would look
9 through it and tell me if that appears to be a transcript
10 of the interview we had?

11 A. Yes, it looks like the transcript.

12 Q. Let me ask you to turn your attention to page
13 nine on lines five through 13.

14 A. Okay.

15 Q. Did you actually on line 13 specifically give the
16 estimate that there was about eight to ten feet between
17 you and Mr. Wood?

18 A. Yeah. The reason why I said it was less is
19 because when I was looking at the picture it looked like
20 it was less than eight to ten feet.

21 Q. And so when he hit you you were standing right
22 across from the water fountain?

23 A. Yes.

24 Q. Against the wall?

25 A. Yes, I was leaning on the wall with my back on

1 the wall and my hands in my pocket.

2 Q. Let me show you what has been admitted as State's
3 exhibit number five. Maybe let me show the jury this;
4 here's the water fountain right here, correct?

5 A. Right.

6 Q. Here's across the hall, right?

7 A. Correct.

8 Q. Where you were standing?

9 A. Yes.

10 Q. Where you got hit?

11 A. Right.

12 Q. Where you fell to the ground?

13 A. Right.

14 Q. You didn't move until Mr. Wood had already left?

15 A. Well, I had fallen and probably rolled a little
16 bit and he came after me.

17 Q. I'm sorry. First of all let's look at this
18 picture. Is there any blood on that entire wall across
19 from the water fountain?

20 A. Not across from the water fountain, maybe about
21 five, six feet down from it.

22 Q. Okay. Did you start bleeding as soon as he hit
23 you?

24 A. I don't know, I didn't take a timing of that.

25 Q. But I think you previously testified that as soon

1 as he hit you, you went down on the ground, right?

2 A. Yeah. I probably rolled over a little bit.

3 Q. Okay. Now you have talked with Investigator

4 Friedlander from the Department of Corrections, right?

5 A. Yes.

6 Q. And that occurred back on October 10th of 2008,

7 right?

8 A. I don't remember the date.

9 Q. Roughly, within a couple months after this
10 happened?

11 A. Yes.

12 Q. Did you ever tell him anything other than you
13 went right down to the ground after being hit?

14 A. I believe that all I told him is what I best
15 recalled. I don't really remember the exact words that I
16 used, sir.

17 Q. Did you ever tell him that you rolled around on
18 the ground?

19 A. I am just trying to picture it in my head. I am
20 sure that when I went down I probably fell and rolled a
21 little bit, I would imagine.

22 Q. Okay. And am I correct that the first time you
23 told anybody that you rolled on the ground was today,
24 right now?

25 A. I don't know.

1 Q. And the reason why you are saying that you must
2 have rolled around on the ground is because there is no
3 blood across the wall from the water fountain?

4 A. Well, yeah, I had never seen these pictures
5 before.

6 Q. Okay. So now that you have seen the pictures --

7 A. So obviously it was a couple feet down from
8 there, I guess.

9 Q. Mr. Schwartz, if you would wait until I ask the
10 question.

11 A. All right, sorry about that.

12 Q. Thank you. Did you ever see a transcript of your
13 interview with Investigator Friedlander from the
14 Department of Corrections?

15 A. No.

16 Q. Let me show you what has been marked for
17 identification as defendant's 0 and ask you if you
18 recognize that as being a transcript of your interview
19 with Mr. Friedlander?

20 A. Yes.

21 Q. Okay. So let's go back to the transcript of the
22 interview that you and Ms. Bensley and I and Mr. Diebolt
23 had back on January 4th of this year.

24 A. Okay.

25 Q. When you were describing to us what happened, did

1 you tell us that you went down to the ground like a sack
2 of potatoes?

3 A. Yes.

4 Q. At any time during that interview did you say
5 that you had rolled around on the ground?

6 A. No, I guess not.

7 Q. Okay. And when you were further describing what
8 had happened to you, did you describe the whole scene as
9 looking like the Texas Chainsaw Massacre?

10 A. Yes, I remember saying that.

11 Q. In your creative writing class did you learn about
12 using literary devices?

13 A. Well, it wasn't really a class. It was just more
14 of a discussion group about writing. It wasn't a class,
15 we didn't learn anything really.

16 Q. So you didn't learn anything about using literary
17 devices to create an effect?

18 A. Not really.

19 Q. Okay. And how long had you been attending this,
20 not a class, how long had you been attending this meeting
21 with this professor from the U of A?

22 A. I don't know how many months. Maybe four or five
23 months.

24 Q. Let me ask you something because I may not have
25 heard you correctly. I thought you had testified that 99

1 percent of the blows to you were by the feet and then --

2 A. No, by the hands.

3 Q. By the hands. Okay. Then I did hear you
4 incorrectly, I apologize. And you said he only kicked you
5 once?

6 A. A couple of times. Like I said it is hard to
7 remember, you know, I wasn't taking stock while it was
8 going on.

9 Q. Sure. And so after you had been struck
10 repeatedly, Mr. Wood went into the classroom, right?

11 A. Correct.

12 Q. He didn't stop along the way, did he?

13 A. No, not that I saw.

14 Q. And would you agree with me that he ran into the
15 classroom?

16 A. It seemed like to me like he just walked calmly
17 from what I recall.

18 Q. Would you look at your interview with
19 Investigator Friedlander, I believe that's exhibit 0.

20 A. Okay.

21 Q. And let me direct your attention to page six at
22 line 22.

23 A. Okay.

24 Q. All right. You see that Investigator Friedlander
25 asked you what happened after he hit you and kicked you,

1 right?

2 A. Okay.

3 Q. And your answer was he ran down the hallway back
4 into the classroom?

5 A. Yes.

6 Q. And then on page seven, line one, did you also
7 tell Investigator Friedlander he runs into the classroom?

8 A. Yeah.

9 Q. Okay. He never went into the bathroom
10 afterwards, right?

11 A. I thought he went straight back to the classroom.

12 Q. Okay. Didn't hang around the water fountain any
13 more, did he?

14 A. No.

15 Q. While he was hitting you, you didn't lose your
16 consciousness, did you, you didn't black out?

17 A. I didn't really remember, to tell you the truth.

18 Q. Well, did you remember when you spoke with Nurse
19 Quattlebaum whether you had blacked out?

20 A. I vaguely remember some of those conversations
21 after.

22 Q. Well, did you tell Nurse Quattlebaum that you
23 didn't lose your consciousness?

24 A. I don't think I did.

25 Q. You don't think so?

1 A. I don't think I lost consciousness is what I'm
2 saying.

3 Q. Do you remember when you talked again with me,
4 Ms. Bensley and Mr. Diebolt, your lawyer, back in January
5 telling us that in fact you did lose consciousness or you
6 blacked out for about five or ten minutes after the
7 corrections officers arrived?

8 A. I blacked out after they arrived when I was
9 sitting on the floor by the door, but I thought you meant
10 did I black out during the incident while he was hitting
11 me.

12 Q. So you were alert while you were being hit,
13 right?

14 A. Yeah.

15 Q. Didnt black out while you were being hit?

16 A. No.

17 Q. Then sometime later when the corrections officers
18 arrived, you blacked out for about five or ten minutes?

19 A. I just lied down and closed my eyes, yeah.

20 Q. Well, I mean you are a medical doctor. You were.
21 You are trained in medicine, right?

22 A. Right.

23 Q. There's a difference between blacking out and
24 lying down and closing your eyes; isn't there?

25 A. When something like this happens, time kind of

1 slows down and things get very fuzzy and I didn't really
2 know what was going on, I was very disoriented after this
3 happened.

4 Q. So you didn't know what was going on?

5 A. Afterwards, I had no idea really what was going
6 on after.

7 Q. But I thought you testified that you remembered
8 the guards saying that Mr. Wood had admitted doing it?

9 A. I'm talking about after, when I am in Nurse
10 Quattlebaum's office. I was lying down and I started kind
11 of dosing off and I'm not really sure if I passed out, if
12 that's passing out or not. I just know I didn't feel
13 well, I closed my eyes.

14 Q. When you were still in the hallway area and there
15 were corrections officers around you, not when you were in
16 Nurse Quattlebaum's office, did you black out?

17 A. To the best of my recollection, no.

18 Q. And did you in fact tell Ms. Bensley and myself
19 and Mr. Diebolt that you did while the corrections
20 officers were around?

21 A. Maybe I did, I can't remember.

22 Q. Why don't you turn to page nine of our interview
23 at lines, starting at the bottom at line 39 to the top of
24 page 10 through line two. See where I am at?

25 A. No, which?

1 Q. Are you on my interview or Friedlander's?

2 A. I am on the wrong one. Let me look.

3 Q. It's easy to get confused.

4 THE COURT: Which exhibit number are you
5 referring to, Mr. Klein?

6 MR. KLEIN: I apologize, Judge, if I could
7 approach.

8 THE COURT: Which interview and I can tell you?

9 MR. KLEIN: This is the interview with me and Ms.
10 Bensley and Mr. Diebolt.

11 THE COURT: That would be exhibit P that you
12 should look for, Mr. Schwartz.

13 THE WITNESS: Okay.

14 MR. KLEIN:

15 Q. Bottom of page nine, top of page ten.

16 A. Okay.

17 Q. Did you tell us in fact that you did black out
18 for maybe five or ten minutes after Officer Powell first
19 arrived?

20 A. I might have been confused, okay.

21 Q. You might have been confused now or then?

22 A. No, then.

23 Q. Back then?

24 A. Yeah.

25 Q. And might you have been confused because you

1 didn't black out at any time while being attended to in
2 the hallway?

3 A. I don't really remember, sir. I mean it is a
4 haze.

5 Q. All right. Now while it is a haze, do you have a
6 pretty good recollection of the first time you got hit?

7 A. I just remember that he wheeled around and hit me
8 and I was standing looking at the floor, that's what I
9 remember.

10 Q. Where did he hit you?

11 A. I don't recall. Somewhere on my face.

12 Q. Okay.

13 A. Maybe the side of my head, you know.

14 Q. When you spoke with me, again this is exhibit P
15 on page four at line 26, did you tell, did you say that,
16 are you there yet?

17 A. What page?

18 Q. Page four, line 26.

19 A. Okay.

20 Q. Did you say he hit me on the side of the head?

21 A. Yeah.

22 Q. On the first time?

23 A. Okay.

24 Q. Because after that is when you went down like a
25 sack of potatoes, right?

1 A. Okay.

2 Q. Is that what you told us?

3 A. I guess so, yes.

4 Q. When you spoke with Investigator Friedlander
5 which I believe is exhibit 0 on page nine. Sorry, I was
6 looking at the wrong notes. Page three, lines 23 and 24.

7 A. Page three, which interview?

8 Q. This is exhibit 0.

9 A. Friedlander?

10 Q. Yes, the one with Investigator Friedlander.

11 A. Page three, line what?

12 Q. 23 and 24.

13 A. Okay.

14 Q. Did you tell Investigator Friedlander the very
15 first punch was to my nose right between the eyes?

16 A. Okay.

17 Q. Is that what you told Investigator Friedlander?

18 A. Yeah.

19 Q. Okay.

20 A. But do you see the next sentence?

21 Q. Let's look at the next sentence.

22 A. You have got to remember this is a rapid sequence
23 and very fast so I can't remember exactly which was first
24 and which was second. I'm approximating.

25 Q. Well, so were you approximating for Investigator

1 Friedlander or were you approximating for the interview
2 with us?

3 A. I don't even remember, to tell you the truth. At
4 this stage I don't even remember where I was hit first or
5 second or last.

6 Q. Okay. But I mean the first blow you would agree
7 was the most memorable, right, because that was the one
8 that was most important?

9 A. None of it is very memorable. I have memory
10 problems since this happened.

11 Q. Okay. Let's talk about your symptoms. When you
12 spoke with, when you were answering questions from Mr.
13 Diebolt, let's see, you had frontal ethmoid nasal
14 fractures?

15 A. Yes.

16 Q. You had fractures of the floor and the roof of
17 the eye sockets?

18 A. Correct.

19 Q. No sense of smell or taste?

20 A. Correct.

21 Q. Mild damage to the right optic nerve?

22 A. Correct.

23 Q. And your right eye was turned outward creating
24 permanent double vision?

25 A. Yes.

1 Q. Those are all your symptoms, right?

2 A. Those are called signs, not symptoms. Signs are
3 what you see by examining, symptoms are what the person
4 complains of.

5 Q. Okay. Sorry for my imprecise medical language.
6 So those are the signs of your condition right now as a
7 result of being punched?

8 A. And a droopy right upper eyelid.

9 Q. You hadn't mentioned that one when you were
10 listing those for Mr. Diebolt?

11 A. No, I didn't mention it.

12 Q. And when I talked with you in exhibit P, when we
13 were talking about, and I may have used the wrong language
14 back then, too. When we were talking about your, I think
15 you referred to them as residual injuries from the
16 incident?

17 A. Yes.

18 Q. You talked basically about five problems. One
19 was that your right eye was sunken about ten millimeters,
20 right?

21 A. Yeah.

22 Q. One was your drooping eyelid, right?

23 A. Yes.

24 Q. This is on pages 23 and 24, the middle of page
25 23, top of page 24.

1 A. Okay.

2 Q. All right. So drooping eyelid; your right eye
3 was sunken; your right eye is turned out; you have
4 constant double vision and chronic pain?

5 A. Yes.

6 Q. Are what you complained of back in January?

7 A. What line am I looking at?

8 Q. Page 23, line fourteen to page 24, line two?

9 A. Okay.

10 Q. When we talked about your residual injuries you
11 never mentioned anything about losing your sense of smell,
12 did you?

13 A. No.

14 Q. You never talked about losing your sense of
15 taste?

16 A. No, I didn't.

17 Q. And later on during that interview we talked
18 about your right eye being sunken, right?

19 A. Correct.

20 Q. And you complained to me that if a CT scan was
21 taken properly, and if the right eye was sunken, the CT
22 scan would not show normal anatomical alignment, right?

23 A. Repeat that question.

24 Q. Sure. During the interview you and I had back in
25 January of this year, you told me that if a CT scan was

1 taken properly and if a person --

2 A. You mean on anyone in general or on me?

3 Q. All right. Let's talk about you. A CT scan of
4 you was taken on, just a second. If a CT scan of you was
5 taken on January 26, 2009, at the Maricopa Integrated
6 Health System of your maxillofacial area without contrast,
7 and if you in fact had a sunken right eye of about ten
8 millimeters, that would not show up as a normal anatomical
9 alignment, would it?

10 A. It may or may not, it depends on a lot of
11 different factors.

12 Q. Have you seen the results of the CT scan of your
13 eye on January 26th?

14 A. I think you showed them to me that day because we
15 had a question about that when we were discussing about
16 how CAT scans are taken and that it depends on the person
17 doing the scan and how they position your head. And
18 sometimes a view may, the eye might look like it is really
19 sunken in a lot, sometimes it might not look like it is
20 sunken in at all; you really have to go on the clinical
21 findings, what you see rather than on the CAT scan.

22 Q. Let me show you defendant's N and ask you if you
23 recognize that as a copy of the CT scan that was done at
24 Maricopa Medical Systems?

25 A. Yes.

1 Q. And that refers to an anatomic alignment on your
2 eye socket?

3 A. The alignment remains anatomic, correct. Like I
4 said it all depends on the way that it is taken, the
5 picture. It is not really even clear what this
6 radiologist means by the word anatomic, does he mean that
7 the eyeball is -- you know, there is an X, O, I and a Z
8 coordinate, which one is he referring to, I don't even
9 know.

10 Q. The condition that you have talked about where
11 your eye was sunken is called enophthalmos?

12 A. Yes, enophthalmos.

13 Q. Could you spell it for the court reporter.

14 A. E. N. O. P. H. T. H. A. L. M. O. S.

15 Q. Okay. And when we were talking about that
16 condition, this is on page 28 of my interview with you
17 which is exhibit P, the last page of the interview?

18 A. Okay.

19 Q. I asked you on line eight relating to this
20 condition, so the eye socket region would not be
21 anatomically aligned, correct?

22 A. You asked me that, yes, but the question once
23 again from a medical standpoint is sort of ambiguous
24 because you are talking about within that socket itself or
25 compared to the other side; there are a lot of ways to

1 interpret that question.

2 Q. Yes. And the way you interpreted that question
3 on January 4th of 2011 was to agree with me and say
4 correct, is that your answer?

5 A. Correct, yeah.

6 Q. So when I asked you, so the eye socket region
7 would not be anatomically aligned back in January, your
8 answer was correct?

9 A. That it is not anatomically aligned, that was my
10 answer.

11 Q. If someone actually suffered from enophthalmos?

12 A. Right. And the reason is because --

13 Q. Excuse me, I didn't ask you for the reason, I
14 just wanted to make sure you agreed with what you told me
15 back in January of 2011.

16 A. Okay.

17 Q. Thank you. All right. Now you have filed a
18 lawsuit against the Department of Corrections, right?

19 A. Yes.

20 Q. And that claims that you did not receive adequate
21 protection from the Department of Corrections?

22 A. Yes.

23 Q. And the prime example in your lawsuit is being
24 hit by Mr. Wood, right?

25 A. Correct.

1 Q. Prior to being hit by Mr. Wood, from July until
2 September 26th, you had previously been struck by three
3 other inmates, right?

4 A. Yeah, from what I recall, yeah.

5 Q. Well, all right, there was one by an inmate by
6 the name of Scott, right?

7 A. Yes.

8 Q. And in fact you wound up fighting back with him
9 in that instance?

10 A. Yes.

11 Q. There was another one by an inmate named
12 Pritchard all by himself?

13 A. Correct.

14 Q. And then there was a third by inmate Pritchard
15 and another inmate?

16 A. Yes, and I don't remember his name, yeah.

17 Q. You know a corrections officer by the name of
18 Angelo Chiaravalllo, right?

19 A. Chiaravalllo, yeah.

20 Q. Okay. And he's been pretty straight with you?

21 A. Yes.

22 Q. As far as you can tell he had no hard feelings
23 toward you?

24 A. No, not that inmate of.

25 Q. He was the officer who went up to Maricopa County

1 with you?

2 A. Yes, he was very kind to me, yeah.

3 Q. And so he never asked you if you wanted to go
4 into protective custody?

5 A. I don't remember, to tell you the truth, sir.

6 Q. You never told him you didn't want to go into
7 protective custody? And actually that's bad phrasing, let
8 me get rid of all the negatives. Did you ever tell
9 Corrections Officer Chiavarallo that you did not want to
10 go into protective custody?

11 A. I can't recall. I think I may have said that to
12 him when I was lying on the table in Nurse Quattlebaum's
13 area there up in that little infirmary area, something of
14 that nature.

15 Q. Let me clarify this. I'm not just talking about
16 when he was with you in September of 2008 at the infirmary
17 and then up at Maricopa County. I'm talking about any of
18 the interactions that you had with him while you were at
19 the Department of Corrections in Tucson?

20 A. I don't recall. I think most of the conversation
21 I had about that was with that Officer Haus. I don't
22 think it was with Chiavarallo.

23 Q. And you testified about that with Mr. Diebold
24 that you had conversations with Corrections Officer Haus,
25 right?

1 A. Yes.

2 Q. Is Officer Haus a man or a woman?

3 A. A woman. H. A. U. S. is how she spells her name.

4 Q. And she was the one who told you not to request
5 it?

6 A. Yes.

7 Q. That's your testimony?

8 A. Yes, sir.

9 Q. And then the only other person that you testified
10 about with Mr. Diebolt was the deputy warden, right?

11 A. Correct, Schaff.

12 Q. And the deputy warden from what you said forced
13 you to sign a paper saying that it was okay for Pritchard
14 to stay on the yard?

15 A. Yes, sir.

16 Q. That had nothing to do with you going into
17 protective custody?

18 A. Well, it sort of does because it was linked
19 together.

20 Q. Did the paper that you signed at the direction
21 of Warden Schaff say that you do not want to go into
22 protective custody?

23 A. No, that paper does not say that, sir.

24 Q. Thank you.

25 A. His name is spelled S. C. H. A. F. F.

1 Q. Did you ever ask Deputy Warden Schaff if you
2 could go into protective custody after you had been, this
3 would have been the third time that you were hit, right?

4 A. Well, I never got to speak to him. After Wood?

5 Q. No.

6 A. Or after Pritchard?

7 Q. Correct me if I am wrong, but the incident that
8 you were talking about involving Deputy Warden Schaff was
9 after you had been hit by inmate Pritchard?

10 A. Correct.

11 Q. In the lunch hall?

12 A. Right, the first time.

13 Q. Okay. And did you ever ask Deputy Warden Schaff
14 to go into protective custody at that point?

15 A. No, sir.

16 Q. Even though you had previously been hit by inmate
17 Scott?

18 A. Correct.

19 Q. And your explanation about the federal guilty
20 plea that you made was basically you had been having
21 intense pain, right?

22 A. Correct.

23 Q. And I think you said that you asked your office
24 manager to fill a prescription for you, right?

25 A. Yes.

1 Q. Did you ask anybody else to do that?

2 A. My girl friend and another office worker, I
3 believe.

4 Q. And in fact that happened multiple times?

5 A. Yes, sir.

6 Q. Like more than 20 times, right?

7 A. I believe so.

8 Q. And your guilty plea in that was to one count of
9 conspiracy to obtain controlled substances by fraud or
10 deceit?

11 A. Yes, sir.

12 Q. And you had previously been convicted in Pima
13 County Superior Court of a felony, correct?

14 A. Yes, sir.

15 MR. KLEIN: If I could have just a moment, Your
16 Honor.

17 THE COURT: You may.

18 MR. KLEIN:

19 Q. Back in September, Mr. Schwartz, what housing
20 unit were you in at the Department of Corrections?

21 A. It is known as Rincon. Which housing?

22 Q. What number unit?

23 A. Oh, building? I started out in five. And I was
24 there for, let's see, I got to Rincon unit in Tucson in
25 July of '07. I started out in building five, I was there

1 maybe five months or so. And then I moved after that to
2 building seven, I believe. I was there for a couple of
3 months and then they started doing some construction on
4 the yard, they were changing over the doors. The doors
5 used to be manual, you had to turn it with a key, and they
6 turned it to fully electronic.

7 So they started moving everyone from building to
8 building, as they would complete one building, the next
9 building they were going to work on, they would move all
10 the guys out of there and they were shuffling buildings
11 around. So we went from seven, then to six, and so I was
12 in different buildings. But at the time when this
13 happened, I believe I was in building six, when this
14 happened.

15 Q. And any of the times that you were at the prison
16 on Rincon yard, were you ever in the same housing unit
17 with Mr. Wood?

18 A. No.

19 Q. In terms of your conviction of a felony in state
20 court, you feel you were wronged, right?

21 A. Wrongfully convicted, yes, I do.

22 MR. KLEIN: I don't have any other questions.

23 THE COURT: Mr. Diebolt, do you have significant
24 redirect? I was just thinking when it is best to take a
25 recess.

1 MR. DIELBOLT: Probably now, Judge, if that would
2 be okay.

3 THE COURT: Ladies and Gentlemen, we will take
4 about a 15 minute recess at this point. I remind you not
5 to discuss the case with each other or with anyone else,
6 keep an open mind, we will see you back in about 15
7 minutes.

8

9 ((Whereupon the afternoon recess is taken and the
10 trial proceeds as follows.))

11

12 THE COURT: The record will reflect the absence
13 of the jury, the presence of counsel and the defendant.
14 Anything before we bring the jury back?

15 MR. KLEIN: I am going to ask to reopen my cross
16 for two very brief areas.

17 THE COURT: Okay. You may bring in the jury.

18 MR. DIELBOLT: Judge, I was going to be fairly
19 brief with my redirect. Then I have actually three
20 witnesses, I don't know that we will get to all three but
21 I would like to get to Fairchild and Arredondo if
22 possible.

23 THE COURT: All right, we will do the best we
24 can.

25 THE BAILIFF: Your Honor, the jury.

1 THE COURT: The record will show the presence of
2 the jury, counsel and the defendant.

3 Mr. Klein.

4 MR. DIEBOLT: Could we approach briefly.

5 THE COURT: Yes.

6

7 ((Whereupon there is an on-the-record bench
8 conference.))

9

10 MR. DIEBOLT: I guess we will have to remove him
11 from the stand, it will probably take about ten minutes or
12 so. It will not be very long.

13 THE COURT: What for?

14 MR. DIEBOLT: Well, he is still in shackles, we
15 brought him in without the jury present, I would like to
16 handle it that same way.

17 THE COURT: You mean when he leaves?

18 MR. DIEBOLT: When he leaves the stand.

19 THE COURT: Is that what you would like me to do?

20 MR. DIEBOLT: Yes. I mean it is sort of
21 cumbersome to do that.

22 THE COURT: Okay.

23

24 ((End of bench conference.))

25

1 THE COURT: Mr. Klein, did you have additional
2 cross-examination?

3 MR. KLEIN: I do, Your Honor.

4 THE COURT: You may.

5 MR. KLEIN: Thank you.

6 Q. Mr. Schwartz, I just had a couple more questions.
7 Number one, when you left the classroom where you were
8 having the creative writing session, had Mr. Wood already
9 left?

10 A. Yeah, he was already in the hallway, sure.

11 Q. And when you walked down the hallway into the
12 area where the inmate restroom is, was Mr. Wood in the
13 hallway?

14 A. Yeah. Didn't you just ask me that?

15 Q. No, what I asked you was when you left the
16 classroom area, had Mr. Wood already left?

17 A. Had he left the classroom to go into the hallway?

18 Q. Had he already left the classroom?

19 A. Yes.

20 Q. Now you mentioned also that one of your
21 continuing problems is double vision?

22 A. Yes.

23 Q. Is that the same as diplopia?

24 A. Yes, that's just a doctor term for it, diplopia.

25 Q. One of the doctors you saw up in Maricopa County

1 was a doctor by the name of Iman Fei z-Erfan?

2 A. Fei z-Erfan, yeah.

3 Q. Okay. It is F. E. I. Z. dash E. R. F. A. N. Do
4 you remember seeing him on February 10, 2009, in
5 connection with problems with your back?

6 A. I amte that's when I had my, we were planning on
7 the surgery or it was at the time of the surgery on my
8 neck, yeah.

9 Q. During that meeting with the doctor did you
10 discuss some family history?

11 A. I don't know what we discussed. I'm sure at some
12 point he must have asked me my family medical history at
13 some point, I am sure.

14 Q. Did he ask you if you had diplopia or
15 intermittent diplopia?

16 A. I don't remember what he asked me, to tell you
17 the truth.

18 Q. Let me show you what has been marked for
19 identification as defendant's R. Does that appear to be a
20 copy of the doctor's report of your contact with him on
21 February 10th, 2009?

22 A. Yeah, 2/10/09, yeah.

23 Q. Directing your attention to the middle of the
24 second paragraph. The sentence begins, when asked, do you
25 see where I am at?

1 A. Yes. When asked the patient about any diplopia,
2 he stated intermittent diplopia and droopy lid, right, I
3 see that.

4 Q. So the patient was you?

5 A. Correct.

6 MR. KLEIN: That's all I have.

7 THE COURT: Mr. Diebolt, you may redirect.

8 MR. DIEBOLT: Thank you.

9

10 REDIRECT EXAMINATION

11 MR. DIEBOLT:

12

13 Q. Just a few questions about the state of mind,
14 your state of mind after you were hit; do you remember if
15 you remained conscious from the hit to going to the
16 ground?

17 A. I don't really remember much, to tell you the
18 truth. I don't remember which end was up.

19 Q. What were you thinking during this time period?

20 A. I was thinking, when is he going to stop? I was
21 thinking, does he have a knife? I was thinking all sorts
22 of things. Some of which I can remember, some of which I
23 can't.

24 Q. Would you describe at least some part of the
25 assault, would you describe yourself as being disoriented?

1 A. I was very disoriented.

2 Q. Were you alert, mentally alert during the
3 assault?

4 A. Yes.

5 Q. Do you remember what came first, what exactly,
6 exactly came first and what came second and what came
7 third and fourth and fifth, sixth, et cetera?

8 A. No, I can't remember the order or specifics like
9 that.

10 Q. You were asked questions from a transcript that
11 you have in front of you. Let me just look at the number
12 or the letter. P. And counsel was asking you some
13 questions about page four, he asked you about several
14 lines about two-thirds of the way down. Do you remember
15 being asked those questions?

16 A. Yes.

17 Q. Those answers or the answer is less a few lines
18 out of maybe 38 lines roughly, that was your entire
19 response to a question that was given, do you remember
20 that?

21 A. Let me look and see the question. Okay. So it
22 was a vague question about tell me all the events that you
23 recall happening, so I kind of went into a best of my
24 recollection diatribe of, you know, what happened.

25 Q. So from line approximately 4 to 42, is that a

1 brief summary that you are giving as to what happened?

2 A. Yes.

3 Q. And in that summary are you talking about the
4 assault of Mr. Wood upon you?

5 A. Correct.

6 Q. I want to refer you to, actually I would ask the
7 Court that that be read in its entirety, the entire 4
8 through 42 for the purpose of context and the purpose of
9 completeness, Judge.

10 THE COURT: You may.

11 MR. DIEBOLT: Thank you.

12 MR. KLEIN: May the record show it's over my
13 objection.

14 THE WITNESS: Do you want me to read it?

15 THE COURT: The record will so reflect.

16 MR. DIEBOLT:

17 Q. I will probably read it and ask you, have you
18 read that, have you looked through it?

19 A. No, actually I haven't.

20 Q. Do you want to take a second to do that to
21 yourself.

22 MR. KLEIN: Can we approach while he's reading
23 that?

24 THE COURT: Yes.

25

1 ((Whereupon there is an on-the-record bench
2 conference.))

3

4 MR. KLEIN: Judge, this is the portion that he is
5 referring to. Among other things there are references in
6 there that are beyond the scope of my cross examination
7 and they were not brought up in direct examination. For
8 example, there are parts in there where he claims that Mr.
9 Wood must have had something in his hand, which was never
10 testified to in direct examination nor addressed during
11 cross examination and not relevant to what I believe Mr.
12 Diebolt is trying to get at.

13 THE COURT: The point is well taken, Mr. Diebolt.
14 I think you can lead him through those parts that are
15 relevant to your examination, staying away from those
16 things that aren't.

17 MR. DIEBOLT: That's fine.

18 THE COURT: If you need guidance at any point,
19 then come back up here and discuss it some more.

20

21 ((End of bench conference.))

22

23 MR. DIEBOLT:

24 Q. I am going to read it to you in sections and I
25 will ask you if that is correct and you just tell me yes

1 or no, is that understood?

2 A. Okay.

3 Q. Your response in the interview, so when I, I went
4 up to the bathroom I, this is about, I guess at about a
5 quarter to two, towards the end of the class, which also
6 coincided with the shift change of the officers on the
7 unit.

8 I walked to the bathroom which is in the outdoor
9 courtyard, you know, took care of business and then came
10 back to go toward the classroom that, and the classroom is
11 down a long corridor, it has to be about 80 yards long I
12 would say judging it against a football field, about 80
13 yards. And along the right-hand side of the corridor are
14 the classrooms. And there's a water fountain between two
15 of the classrooms and I was going to go to the water
16 fountain and get a drink and then go back into the
17 classroom.

18 And Mr. Wood was at the water fountain. At the
19 time he was just kind of doing something in front of the
20 water fountain. I wasn't sure what but I really wasn't
21 paying attention. I figured I would just let him go, you
22 know, and then I will go after, use it after. And so I, I
23 was just standing against the wall across from the water
24 fountain, so maybe ten feet away from him.

25 Does that all sound correct so far?

1 A. Yes.

2 Q. And I had my hands in my pocket, I'm looking down
3 at the ground and all of a sudden he wheeled around about
4 180 degrees and he, I'm just going to go in sections, he
5 hit me on the side of the head and I went down like a sack
6 of potatoes. And as soon as I went down, he was on me,
7 all over me, you know, punching, kicking, and then like
8 maybe after twenty seconds of that I like, all right, all
9 right, enough, enough, you know. And while he's kicking
10 me he is calling me a dirty kyke and you know a fucking
11 Jew and basically that was it.

12 And then he, he just walked away and you know I
13 was kind of hit and I got up, felt along the wall and
14 walked, you know, holding the wall, I really couldn't see
15 much. My glasses were broken and I had a lot of swelling
16 around my right eye and I kind of felt along the wall
17 toward the entrance way into the courtyard. And while I
18 was there the officers saw me and they came running and
19 they called, and that's what's called an ICS which is some
20 kind of incident, you know, an assault, whatever. You
21 know, whenever there's an assault they call ICS so it
22 locks basically everybody down who is on the yard and they
23 came running and they immediately went to the classroom
24 and he said I did it. I mean, you know, he just said it
25 out loud, I did it.

1 Does that look accurate, sir, as to the
2 interview?

3 A. Yes, sir.

4 MR. DIEBOLT: That's all I have, Judge, thank
5 you.

6 THE COURT: Jury have any questions of this
7 witness?

8 All right, Ladies and Gentlemen, then we will
9 excuse you again just for a few moments, and we will have
10 you right back and the State will proceed with its next
11 witness.

12 The record will show the absence of the jury.

13 The Court orders that the witness be returned to the
14 Department of Corrections as soon as possible.

15 MR. DIEBOLT: Judge, how long do you plan on
16 going this afternoon?

17 THE COURT: Close to five. Who will be your next
18 witness, Mr. Diebolt?

19 MR. DIEBOLT: Officer Fairchild.

20 THE BAILIFF: Your Honor, the jury.

21 THE COURT: Yes. Please be seated. The record
22 will show the presence of the jury, counsel and the
23 defendant.

24 The State may call its next witness.

25 MR. DIEBOLT: The State calls Officer Fairchild.

1 THE COURT: If you would come forward and face
2 the clerk and raise your right hand and be sworn.

3

4 OFFICER FAIRCHILD

5 having been duly sworn, takes the witness stand and
6 testifies as follows.

7

8 DIRECT EXAMINATION

9 MR. DIEBOLT:

10

11 Q. Would you introduce yourself to the jury, please.

12 A. Julie Fairchild.

13 Q. What is your occupation?

14 A. I'm a correctional officer.

15 Q. How long have you been with the Department of
16 Corrections?

17 A. Fifteen years.

18 Q. And as of September of 2008, what were your
19 responsibilities at the Department of Corrections?

20 A. To maintain public safety and the health and
21 welfare of inmates and staff.

22 Q. Were you aware of an incident that occurred
23 between two inmates after a creative writing class on
24 September 27th, 2008?

25 A. I was and it was during a creative writing class.

1 Q. Thank you for that correction. Were you notified
2 something was going on, is that how it happened?

3 A. No, I noticed blood out front of the doors.

4 Q. What did you do at that point?

5 A. I entered the hallway.

6 Q. Is the hallway adjacent to the classroom itself?

7 A. Yes, it is.

8 Q. Is that classroom designed or at least used at
9 that time for the purpose of conducting educational
10 classes?

11 A. Yes.

12 Q. Is that the educational portion of the prison?

13 A. Yes.

14 Q. And do inmates attend those classes?

15 A. Yes, they do.

16 Q. While they are attending classes are they allowed
17 to go out to the inmate restroom or the drinking fountain?

18 A. Yes.

19 Q. Is that normal behavior?

20 A. Yes, it is.

21 Q. When you entered the area what did you first
22 notice?

23 A. As soon as I entered the doorway, only one door
24 opens at a time, I noticed inmate Schwartz was huddled in
25 the corner here on the opposite side of the door and there

1 was blood everywhere in the hallway.

2 Q. What did you do at that point?

3 A. At that point I went down to the classroom that
4 was being held by a volunteer to insure his safety, which
5 is the public.

6 Q. Did you determine that the volunteer teacher I
7 guess, was it a teacher or an instructor or something?

8 A. Yes, an instructor.

9 Q. Once you made the determination that person was
10 okay, is that Fairchild to say?

11 A. Yes, sir.

12 Q. What did you do next?

13 A. After that I instructed all the inmates that were
14 still in the classroom to line up against the wall for a
15 knuckle body check.

16 Q. At any point did you or other officers ask for
17 help to get other officers there?

18 A. Prior to me entering the classroom, Officer
19 Powell followed behind me. And he noticed inmate Schwartz
20 as well and that's when he initiated an ICS. Which is an
21 alert for all of us to stand, to get ready to help out.

22 Q. So then you lined up the remaining inmates in the
23 classroom; is that correct?

24 A. Yes, sir.

25 Q. Did you yourself at that point go to inmate

1 Schwartz and render any aid to him at that point?

2 A. No, sir.

3 Q. Did you go to the classroom and line up the
4 inmates?

5 A. Yes, sir.

6 Q. What happened at that point?

7 A. At that point I instructed all the inmates to
8 face the wall, to line up against the wall and I was
9 looking for blood on their clothing, blood on their shoes,
10 anybody shaking, usually their adrenalin, the assaulter
11 will start shaking.

12 Q. So I guess that leads to my next question. In
13 the 15 years or so that you have been in the Department of
14 Corrections have you seen inmate assaults before?

15 A. Yes, sir.

16 Q. Have you come to the scene after inmate assaults?

17 A. Yes, sir.

18 Q. You said you were looking for signs that would
19 indicate to you someone else may have been involved?

20 A. Yes, sir.

21 Q. Did you make such observations?

22 A. Yes, I did.

23 Q. Tell the jury what you observed?

24 A. I came upon inmate Jeffrey Wood and noticed there
25 was blood on his shoes, blood splatter on his pant legs.

1 I instructed him to turn around so I could cuff him, take
2 him out of the classroom and then cuff him. And at that
3 point when I was handcuffing him he advised me that he was
4 the only one that assaulted inmate Schwartz.

5 Q. Did you make any observations of him physically
6 other than what you have described? You mentioned some
7 adrenaline or something, anything that would be consistent
8 with being in an assault situation?

9 A. No, sir.

10 Q. Did you take him outside of the classroom and
11 cuff him?

12 A. Yes, sir, I did.

13 Q. Is there a particular protocol for that?

14 A. Yes. When you are going to restrain an inmate,
15 you want to remove him from any other further harm. One
16 inmate that is handcuffed behind the back, it's not safe
17 to be around other inmates that aren't. So you always
18 remove them from the area.

19 Q. At some point did you, let me rephrase that.
20 Once you had inmate Wood handcuffed, what did you do with
21 him?

22 A. Two other officers came and relieved me of inmate
23 Wood and escorted him to a holding pin.

24 Q. Did you make any other observations of any other
25 inmates other than the two that you described, inmate Wood

1 and inmate Schwartz, having any signs that would be
2 consistent with being involved in that assault?

3 A. No, sir.

4 Q. Do you see inmate Wood in the courtroom today?

5 A. Yes, I do.

6 Q. Where is he sitting and what is he wearing?

7 A. He's wearing a blue shirt with a striped tie.

8 MR. DIEBOLT: I believe that's all the questions

9 I have. Thank you.

10 THE COURT: You may cross, Ms. Bensley.

11

12 CROSS EXAMINATION

13 MS. BENSLEY:

14

15 Q. Good afternoon. Not too many questions. You
16 were personally involved with conducting the body and
17 knuckle check that you described?

18 A. Yes.

19 Q. And at that time you did not see any blood on
20 Mr. Wood's pants?

21 A. No, I did not.

22 Q. You didn't see any redness, bruising or scratches
23 on his hands?

24 A. No, I did not.

25 Q. And no bruises, redness or scratching anywhere

1 else on Mr. Wood's body?

2 A. No, I did not.

3 Q. And you were in a position to come into contact
4 based on the observations that you made with Mr. Wood's
5 shoes and pants?

6 A. Okay, can you say that again, please.

7 Q. You were in a position to come into contact with
8 his shoes and pants?

9 A. Come into contact how?

10 Q. Well, you were with him? You were in the
11 presence of that, you were able to observe things?

12 A. Yes.

13 Q. And you personally never took any swabs or any
14 evidence processing off of the pants or the shoes?

15 A. No, ma'am, I did not.

16 Q. Nor from Mr. Wood's hands?

17 A. No.

18 Q. And you don't know personally if his pants,
19 Mr. Wood's pants or shoes were taken as evidence or
20 collected?

21 A. No, I do not know that.

22 Q. And this statement that you described while you
23 were testifying that Mr. Wood made, that was in response
24 to a question that you asked him?

25 A. Yes, I asked him what was going on.

1 Q. And when Mr. Wood made that admission to you,
2 that statement, did he say it in a loud voice or a quiet
3 voice, a whisper?

4 A. He was facing the wall, he turned his head and
5 said, I was the only one.

6 Q. Okay.

7 A. Not abruptly, not boisterous, none of that, just
8 as I am speaking to you.

9 Q. Did you tell Mr. Schwartz anything about what Mr.
10 Wood told you?

11 A. No.

12 Q. And in the contact that you had with Mr. Wood,
13 was he cooperative with you?

14 A. Yes.

15 Q. And he wasn't violent with you?

16 A. No.

17 MS. BENSLEY: Can I have one second. I have no
18 further questions. Thank you, officer.

19 THE COURT: Any redirect?

20 MR. DIBOLT: Nothing further, Judge, thank you.

21 THE COURT: Jury have any questions of this
22 witness?

23 Thank you, officer, you may step down, you are
24 excused.

25 THE WITNESS: Thank you, sir.

1 THE COURT: The State may call its next witness.

2 MR. DIBOLT: The State calls Samuel Arredondo.

3

4 SERGEANT ARREDONDO

5 having been duly sworn, takes the witness stand and
6 testifies as follows.

7

8 DIRECT EXAMINATION

9 MR. DIBOLT:

10

11 Q. Tell the jury your name.

12 A. Sergeant Samuel Arredondo.

13 Q. What is your occupation?

14 A. I'm a correctional sergeant for the State of
15 Arizona.

16 Q. If I may approach just to adjust that microphone.
17 How long have you been with the Department of Corrections?

18 A. About six and a half years.

19 Q. And your current rank is sergeant; is that
20 correct?

21 A. Yes, sir.

22 Q. I want to take you back to September 27th, 2008.
23 Did you become aware of an incident between two inmates
24 somewhere outside of a creative writing class?

25 A. Yes, sir.

1 Q. Did you respond to that location?

2 A. Yes, sir, I responded.

3 Q. What was the reason for you going there?

4 A. To assist, to see if they needed any help, to see
5 if the staff that was already taking care of problems, to
6 see if they needed any help.

7 Q. I want to have you tell the jury about what
8 happened when you got to that location; do you recall?

9 A. Yes. When I arrived I saw Officer Powell, first
10 of all he's the one that initiated the Incident Command
11 System. I spoke to him.

12 Q. By initiating the Incident Command System, does
13 that mean alerting other officers that something is going
14 on?

15 A. That's correct.

16 Q. Once that is done, do officers respond there?

17 A. Yes, sir.

18 Q. Please continue.

19 A. So I spoke to him first and asked him what had
20 happened. And he had said that he initiated ICS for an
21 inmate that had been assaulted.

22 Q. What did you do in response to that?

23 A. I asked him where the inmate was. He pointed out
24 inmate Schwartz. I went over there to see what I could do
25 to assist.

1 Q. And describe the scene as best you can for the
2 jury?

3 A. Inmate Schwartz was sitting down just inside the
4 hallway entrance of the education area. He was sitting
5 down, or he was actually kneeling down on the floor just
6 on the inside of the door. As I walked in I saw him
7 there; he was very bloody and I saw lots of blood down the
8 hallway. I saw it on the walls. On the floor.

9 Q. Did you see any other inmates inside of the
10 classroom?

11 A. Initially it was only me and Schwartz.

12 Q. At some point did you direct or ask that
13 photographs be taken of the blood in the area?

14 A. Sergeant Gonzales was there attending to inmate
15 Schwartz and I left that area to go to the sergeant's
16 office to obtain a camera and I came back and took photos
17 of the scene.

18 Q. A photo was taken of Mr. Schwartz as well?

19 A. Yes, sir.

20 Q. And do you recall if photographs were taken of
21 the hallway and the walls as well?

22 A. Yes, sir, they were.

23 Q. At some point was medical attention given to
24 inmate Schwartz?

25 A. That's correct.

1 Q. At some point was inmate Wood separated from the
2 rest and handcuffed?

3 A. Yes.

4 Q. Did you make any observations of inmate Wood
5 yourself, sir, did you see him there?

6 A. Yes, I did.

7 Q. What were your observations?

8 A. Officer Fairchild had discovered that inmate Wood
9 had blood on his clothes. She directed him away from the
10 rest of the inmates that were in the classroom and brought
11 him into the hallway where he was restrained. And I saw
12 that he had some blood on his pants and on his shoes and I
13 took pictures of that also.

14 Q. Does the Department of Corrections have a
15 criminal investigation unit that handles follow-up
16 investigations?

17 A. That's correct.

18 Q. Is Investigator Friedlander a part of that unit?

19 A. Yes, sir.

20 Q. Did he also come in at a later point to do
21 some follow-up as far as this investigation went?

22 A. He did follow-up. I don't remember that he was
23 there that day. But he did some follow-up.

24 Q. At some point did he talk to you about what your
25 observations were?

1 A. Yes, I was interviewed by him.

2 Q. Do you recall what if anything happened to the
3 shoes and pants of inmate Wood?

4 A. The day that it happened, after inmate Wood was
5 escorted to a holding enclosure behind the building, I
6 instructed an officer to take the pants and the shoes from
7 the inmate.

8 Q. Did you see any injuries yourself, did you
9 yourself observe any injuries to inmate Wood?

10 A. No.

11 Q. Did you see any injuries to any other inmates
12 that were associated with that reading class on that day?

13 A. No other inmates besides Mr. Schwartz.

14 MR. DLEBOLT: That's all I have, thank you.

15 THE COURT: Cross examination. Ms. Bensley.

16

17 CROSS EXAMINATION

18 MS BENSL EY:

19

20 Q. You were in a briefing at the time that you
21 received the information about the incident on September
22 27th 2008?

23 A That's correct

24 Q. And that briefing was being held in a room that
25 was very near to where Mr. Schwartz was found?

1 A. Right.

2 Q. Just essentially out the doorway?

3 A. Out the doorway and around the corner.

4 Q. But a very short distance?

5 A. Pretty close.

6 Q. And you told us that you instructed another
7 officer to gather the shoes and pants that Mr. Wood was
8 wearing on September 27th?

9 A. Right.

10 Q. That was so that the clothing and the shoes could
11 be collected as evidence?

12 A. Correct.

13 Q. And you personally didn't take any swabs of the
14 pants, shoes or anything on Mr. Wood's person or his
15 actual hands?

16 A. No.

17 Q. You do recall seeing the bag of clothes and shoes
18 at some point?

19 A. Yes.

20 Q. But you don't know where they ended up?

21 A. No.

22 Q. You had some interaction with Mr. Schwartz on
23 September 27th, 2008?

24 A. Yes.

25 Q. And at that point Mr. Schwartz was explaining his

1 injuries to you after he had been in this incident?

2 A. Yes.

3 Q. And he was actually like naming the different
4 bones for you and the parts of the eye that he thought
5 were effected?

6 A. Right.

7 Q. And you were aware of Mr. Schwartz previous to
8 September 27th, 2008?

9 A. I was aware that he was an inmate at Rincon, yes.

10 Q. Because you were actually aware of previous
11 assaults or fights that Mr. Schwartz was involved in?

12 A. Well, what I was aware of was another supervisor
13 telling me that he had dealt with him in some situations,
14 I don't remember the details on it. I personally had
15 never dealt with him in that capacity.

16 Q. But you were aware that there had been some
17 previous issues?

18 A. No, I heard that there were but I didn't know the
19 details of them.

20 Q. And you had received information or had a
21 recollection that Mr. Schwartz didn't want to enter
22 protective custody?

23 A. The recollection that I had was another
24 supervisor telling me that he thought that he had heard
25 about that.

1 Q. And you had also recalled or had heard that Mr.
2 Schwartz had actually signed a statement that declined
3 that protective custody?

4 A. That would be the same answer for that.

5 Q. And that's a yes, you had heard that?

6 A. I had heard that.

7 MR. DIEBOLT: I am going to object to the
8 question, Judge.

9 THE COURT: Sustained.

10 MS. BENSLEY:

11 Q. You were aware of that?

12 MR. DIEBOLT: Same objection.

13 THE COURT: Sustained.

14 MS. BENSLEY:

15 Q. Are you familiar with involuntary protective
16 custody or IPC as it is sometimes called?

17 A. Yes.

18 Q. And is that when the prison, the Department of
19 Corrections actually can place somebody into that custody
20 without the permission of that inmate?

21 A. Right.

22 Q. That's a Fairchild description of that?

23 A. Right.

24 Q. Were you aware of that happening to Mr. Schwartz
25 prior to September 27th of 2008?

1 A. No.

2 Q. Can I have just one second, Your Honor. Were you
3 able to overhear or hear the conversation that Officer
4 Fairchild was having with Mr. Schwartz on September 27th,
5 2008?

6 A. I don't recall.

7 Q. Were you able to hear her conversation with
8 Mr. Wood?

9 A. I don't recall either.

10 Q. I am going to show you a few photos.

11 MS. BENSLEY: Your Honor, may I approach?

12 THE COURT: Yes.

13 MS. BENSLEY:

14 Q. Let me show you what has been marked for
15 identification as defendant's exhibits S, T and U. And I
16 am going to ask you if you are familiar with those. Go
17 ahead and take a look at those.

18 A. Yes, I am familiar with these.

19 Q. And those are the shoes of Mr. Wood on September
20 27th, 2008?

21 A. These appear to be the photos that I took of
22 inmate Wood's shoes on that date.

23 Q. Those are a Fairchild representation of what you
24 actually saw as well as the pictures that you took?

25 A. Correct.

1 MS. BENSLEY: And may I approach?

2 THE COURT: Yes.

3 MS. BENSLEY:

4 Q. And let me give you S first. What is this
5 picture, what are you trying to depict in this picture,
6 what is it significant for?

7 A. It shows what appears to be blood on the bottom
8 of inmate Wood's right shoe.

9 Q. And then defense exhibit T?

10 A. The next one?

11 Q. Is that the same thing? The bottom of the shoe?

12 A. The bottom of the left shoe, yes.

13 Q. And then defense exhibit U?

14 A. That shows what appears to be blood on the front
15 and tip of his right shoe. This last one also shows the
16 spot that I believed at the time to be blood on his pants.

17 Q. When you say the last one, can I approach again?

18 THE COURT: Yes.

19 MS. BENSLEY:

20 Q. And that is defense exhibit U. And there were no
21 other photos that you took of the shoes and clothing on
22 that day?

23 A. Not that I recall.

24 MS. BENSLEY: Your Honor, I would move for the
25 admission of defense S, T and U.

1 THE COURT: Any objection?

2 MR. DIEBOLT: No objection, Judge.

3 THE COURT: Exhibits S, T and U are admitted,

4 MS. BENSLEY: I don't have any further questions.

5 THE COURT: Any redirect?

6 MR. DIEBOLT: No, Judge, thank you.

7 THE COURT: Jury have any questions of this
8 witness?

9 Thank you, Sergeant, you may step down, you are
10 excused.

11 State have additional witnesses?

12 MR. DIEBOLT: I have one additional witness,
13 Judge, at the Court's pleasure. I can begin now if you
14 wish.

15 THE COURT: Will it take more than 20 minutes do
16 you think?

17 MR. DIEBOLT: Probably for cross as well, Judge.

18 THE COURT: All right. We will just end there
19 then for the day and that witness will be available
20 tomorrow morning?

21 MR. DIEBOLT: 10:30, Judge.

22 THE COURT: Yes. All right. Ladies and
23 Gentlemen, at this point then, it is about 25 minutes to
24 five, a little bit earlier than we usually stop but you
25 have been in the courthouse a long time already today and

1 it will give you a chance to beat the traffic a little bit
2 so we are going to recess for the day.

3 We will ask you to return back tomorrow morning
4 at 10:25 tomorrow morning. During the recess please
5 remember not to discuss the case with each other or with
6 anyone else; keep an open mind; we will see you back here
7 tomorrow morning. Thank you very much for your attention.

8 The record will show the absence of the jury, the
9 presence of counsel and the defendant.

10 Counsel, so as to help along with the preparation
11 of the instructions, are we going to have any expert
12 testimony in the case, is it necessary to have the expert
13 testimony instruction?

14 MR. KLEIN: No.

15 MR. DIEBOLT: No, Judge.

16 THE COURT: I believe that is Court's instruction
17 so we will take that one out. Is either side going to
18 request an instruction on the lesser included of assault?

19 MR. KLEIN: No.

20 THE COURT: So we can exclude those. And I
21 haven't had a chance to look over your instructions so I
22 will have them ready tomorrow morning.

23 Anything else we need to take up today?

24 MR. KLEIN: I don't believe so.

25 MR. DIEBOLT: No, Judge.

1 THE COURT: The Court will be in recess until
2 10:30 tomorrow morning in this trial.

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7 I, Deirdre Muzall, certify that I took the shorthand
8 notes in the foregoing matter; that the same was
9 transcribed under my direction; that the preceding pages
10 of typewritten matter are a true, accurate and complete
11 transcript of all the testimony adduced, to the best of my
12 skill and ability.

13

14

15 Deirdre Muzall, RDR, #50012

16 Certified Court Reporter

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